

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

American Federation of State, County,
and Municipal Employees,)
)
)
Charging Party)
)
and)
)
County of Cook and Sheriff of Cook County,)
)
)
Respondent)

Case No. L-CA-10-032

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

On January 30, 2012, Administrative Law Judge (ALJ) Anna Hamburg-Gal issued a Recommended Decision and Order (RDO) in the above-captioned case, finding the County of Cook and Sheriff of Cook County (Respondent) violated Section 10(a)(1) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010, as amended (Act)), by denying Melissa C. Flores's request for representation by the American Federation of State, County and Municipal Employees (Charging Party) during an investigatory interview. As relief, the ALJ ordered that Flores be made whole for a three-day suspension that followed the interview. However, the ALJ found Respondent had not violated Section 10(a)(1) of the Act when it subsequently terminated Flores's employment as a probationary sheriff's police officer, demoted her, and reassigned her to her former correctional officer job title.

Respondent filed timely exceptions to the RDO pursuant to Section 1200.135 of the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code §1200.135, and Charging Party filed a timely response. After reviewing the record, the appeal, and the response, we adopt the ALJ's determination that Respondent violated Section 10(a)(1) of the Act by

denying Flores's request for a representative, but we modify the relief recommended for the reasons that follow.

Background

Flores had been hired as a correctional officer in 2005 with the Cook County Department of Corrections, but she was subsequently hired as a police officer with the Cook County Sheriff's Office and was serving her one-year probationary period at the time of the events here at issue. Soon after the beginning of her shift on September 18, 2009, two of Flores's superiors, Sgt. Wuerffel and Lt. Alvarado, asked to speak with her, advising her at the beginning of the meeting that the administration was seeking to discipline her concerning her conduct at an arrest occurring on September 10, 2009. Flores asked for a union representative, but her request was denied and the meeting continued. Following the meeting, Flores was asked to draft a memo describing the events; then was twice asked to make corrections to the memo. She finished the final draft of the memo by the end of her eight-hour shift. She was asked to return to work 30 minutes later, and at that time was given a copy of a form requesting that she be given a three-day suspension. Flores told one of her superiors that the form contained mistakes, and that she would grieve the matter. Two weeks later, on September 25, 2009, she was informed that she would be sent back to the Department of Corrections because of the pending disciplinary action, her low activity, and negative feedback from her supervisors.

ALJ's analysis

The ALJ concluded Flores had a right to representation at the interview pursuant to NLRB v. Weingarten, 420 U.S. 251 (1975), finding both that the interview was investigatory in contemplation of discipline and that Charging Party had not waived its unit members' Weingarten rights by incorporating reference to the Uniform Police Officer Disciplinary Act, 50

ILCS 725 (2010), into the collective bargaining agreement where it had not also expressly limited the right of representation to interrogations or investigations.¹ She rejected Charging Party's contention that Respondent suspended Flores *because* she had requested representation, but Respondent had clearly denied Flores's request for representation and the ALJ found a violation of Section 10(a)(1). In fashioning a remedy, she ordered Respondent to post a notice, and, because she also found the three-day suspension was "predominantly dependent" upon the information obtained through the interview, found that Flores should also be made whole for the three-day suspension, relying on Cnty. of Stephenson, 21 PERI ¶223; City of Highland Pk., 15 PERI ¶2004 (IL SLRB 1999), and City of Chicago (Dep't of Aviation), 13 PERI ¶3014 (IL LLRB 1997).²

Exceptions

Respondent excepts to the order to make Flores whole for the three-day suspension and to the ALJ's underlying factual finding that the three-day suspension was predominantly dependent upon information obtained through the unlawful interview. It claims it is clear from the testimony and an exhibit³ that, even before the interview with Flores, it had more than enough

¹ In making this determination, the ALJ applied precedent from the Illinois Supreme Court and the State Panel of this Board. Ehlers v. Jackson Cnty. Sheriff's Merit Comm'n, 183 Ill. 2d 83, 96 (1998); 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); Cnty. of Stephenson, 21 PERI ¶223 (IL LRB-SP 2005). Respondent does not except to this aspect of the RDO, and consequently we do not address it.

² Although the ALJ found Respondent violated Section 10(a)(1) by denying Flores's Weingarten right to representation, she found Respondent had not violated Section 10(a)(1) by subsequently demoting Flores. She found Flores had engaged in protected concerted activity in stating that she planned to file a grievance, but Charging Party failed to establish a causal link between that protected activity and the demotion which appeared to be for legitimate reasons. No exceptions were filed from this aspect of the RDO, and consequently we do not address it.

³ The exhibit cited was the form request for summary disciplinary action given to Flores 30 minutes after she had handed in the final version of her memo at the conclusion of her shift. The substantive portion is contained in the section labeled "Incident of Misconduct" and reads:

On 10 September 09 at 0347 hrs. P/O Flores #429 responded to a call of Suspicious Circumstance at Dee Park. Upon arriving at the scene P/P/O Flores noticed a male

evidence to support the disciplinary action. For example, Flores's superiors had knowledge relating to her alleged failure to follow the chain of command, and, as the arresting officer, Flores was responsible for inventorying recovered marijuana and therefore the Respondent would need little evidence beyond the fact that the marijuana had not been properly inventoried.

Charging Party argues the ALJ correctly determined there was no evidence Respondent undertook any independent investigation of the arrest and that Respondent imposed the suspension based solely on Flores's response during the interview and the two-page memo she was forced to write immediately afterward. It argues Respondent's reference to Flores's testimony is misplaced in that it does not indicate Respondent possessed any facts, much less sufficient facts, warranting suspension other than by means of the unlawful interview. As did the ALJ, it cites City of Chicago (Dep't of Aviation), 13 PERI ¶3014 (IL LLRB 1997), for the proposition that make-whole relief is required where disciplinary action would not have occurred but for the wrongful interview.

subject and a [sic] infant child. P/P/O Flores ran the male subject Daoud Waleed through LEADS and P/P/O Flores learned that he had an active warrant out of Park Ridge for Possession. After searching the subject P/P/O Flores found suspected cannabis in Daoud's pocket. After Daoud was taken into custody and secured P/P/O Flores and P/O Luciano #144 went 10-8 from the call. Enroute to transport Daoud to be processed P/O's [sic] phoned Lt. Alvarado by passing [sic] the Chain of Command of Sgt. Wuerffel #42 who was on scene. P/O's [sic] requested to drop the arrestee at the Park Ridge Police Department. Lt. Alvarado instructed them to check with Park Ridge Police Department to see if they would accept the arrestee. Lt. Alvarado instructed P/P/O Flores and P/O Luciano to process the arrestee though [sic] I-CLEAR. At no time was Lt. Alvarado informed about the suspect cannabis that was found. After the paperwork was turned in Sgt. Wuerffel #42 inquired why there was not CB# on the warrant service. P/P/O Flores stated the CB # was not pulled due to the arrestee being turned over to the Park Ridge Police Department. Sgt. Wuerffel #42 asked why she would drop a warrant at Park Ridge and not process it through I-CLEAR or at Maywood Lock Up which are our procedures in the General Orders. Sgt. Wuerffel inquired how did she process the arrest for suspect cannabis that Daoud had on him. P/P/O Flores stated the P/O Luciano had the suspect cannabis therefore P/P/O Flores did not properly inventory it. Nothing further.

Discussion and Analysis

The parties challenge no aspect of the ALJ's RDO other than the form of relief provided for the violation of Flores's Weingarten rights. Consequently, we do not review whether the Respondent had violated Flores's Weingarten rights, or whether Respondent had not violated the Act in subsequently demoting Flores. The only question presented is whether the relief allowed for the Weingarten violation should be limited to a cease and desist order and posting of a notice, or whether it should also include a make-whole remedy for the three-day disciplinary suspension as the ALJ recommended.

We disagree with the ALJ's determination that the suspension was predominantly dependent upon the information obtained in the interview, and find no basis for a make-whole remedy for the suspension. The content of the disciplinary form set out in footnote three above includes information that appears to have come from Flores's superiors, not solely through the interview with Flores, and the ALJ finds the Respondent could reasonably have believed accounts provided by Flores's superiors instead of Flores's account. The ALJ is correct to the extent there does not appear to have been an investigation that was entirely independent, i.e., could stand on its own without ever having contemplated gathering and incorporating information from the interview with Flores, but the relevant test is not whether the employer relied solely on the unlawful interview, but whether it predominantly relied on that interview.

Respondent claims it had sufficient evidence to support discipline even without the information supplied through the interview with Flores. That comes closer to the standard. In City of Chicago (Dep't of Aviation), 13 PERI ¶3014, we addressed a situation, like this, where an employee had not been disciplined because she asked for representation, but the Board nevertheless had to fashion a remedy for the denial of Weingarten representation. After

reviewing NLRB precedent, we distinguished that precedent and stated: “we are empowered under Section 11(c) of the [Illinois Public Labor Relations] Act to devise a make-whole remedy for a Weingarten violation in cases where an employer’s claim that it has just cause to discharge a public employee is predominantly dependent upon information it obtained through an unlawful interrogation of the employee.” We reinstated an employee with backpay where he had been discharged for violating residency requirements and the only evidence concerning his residency other than an admission during the unlawful interview had been a “problematic” surveillance record. The admission at the interview was not the sole evidence, but the case for discharge was doubtful without it. Under the facts of that case, we found substantial evidence that the discharge had been “the product of the [employer’s] unfair labor practice.”

It cannot be fairly said that Flores’s three-day suspension was the *product* of her interview. She did not make an admission or reveal a fact that was not otherwise available to the Respondent through the standard police report forms and her superiors’ accounts of their interactions with her during the events surrounding the September 10 arrest. The critical information referenced in the form requesting discipline need not have come through the interview. In fact, Flores’s description of the interview suggests it did not. At the very beginning of the interview, Sgt. Wuerffel and Lt. Alvarado told her that the administration was seeking disciplinary action against her. Moreover, Flores said the interview itself “started with Sergeant Wuerffel asking me questions as to why I went over her head and conducted my investigation in such a way.” Flores described the nature of Lt. Alvarado’s questions as concerning “why I would call him instead of going directly to Sergeant Wuerffel.” Clearly even before the interview Respondent had information tending to support imposition of discipline, and

one of the goals of the interview seemed to be to give Flores a chance to provide reasons why her actions had been proper despite her superiors' initial impressions that they were not.

Under the facts of this case, we suspect that, had the Respondent simply terminated the interview upon Flores's request for representation, it would nevertheless have imposed the three-day suspension even in the absence of any information derived from the interview. We do not find the discipline was the product of the interview, and therefore find the proper relief for the Weingarten violation should be limited to a cease and desist order and the posting of a notice, and should not include a make-whole remedy for the three-day suspension. We adopt the ALJ's RDO with this modification to the remedy.

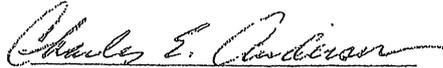
ORDER

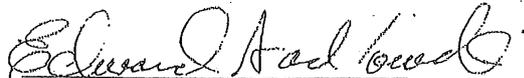
IT IS HEREBY ORDERED that Respondent, its officers and agents, shall:

- 1) Cease and desist from:
 - a. In any like or related manner, interfering with, restraining, or coercing employees in the exercise of rights guaranteed them in 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 Respondent will take reasonable efforts to ensure that the notices are not altered, defaced or covered by any other material.
- 3) Notify the Board in writing, within 20 days from the date of this Decision, of the steps the Respondent has taken to comply with this order.

BY THE ILLINOIS LABOR RELATIONS BOARD, LOCAL PANEL


Robert M. Gierut, Chairman


Charles E. Anderson, Member


Edward E. Sadlowski, Member

Decision made at the Local Panel's public meeting in Chicago, Illinois, on April 12, 2012;
written decision issued at Chicago, Illinois, May 1, 2012.

