STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Rhodda Thompson,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. L-CA-10-043
	)	
County of Cook/Hektoen Institute,	)	
	)	
Respondent	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD LOCAL PANEL

On October 21, 2013, Administrative Law Judge Michelle N. Owen issued a Recommended Decision and Order in the above-captioned case, recommending that the Illinois Labor Relations Board, Local Panel (Board) find that the County of Cook/Hektoen Institute (Respondents) were joint employers of Rhodda Thompson (Charging Party) and that Respondent County of Cook violated Section 10(a)(1) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012) (Act), when it failed to evaluate Charging Party's performance in a timely manner and subsequently discharged her. The Administrative Law Judge also found that Respondent Cook County did not violate the Act when it issued Charging Party a formal warning, denied Charging Party's application for leave under the Family Medical Leave Act (FMLA), refused to allow her to file for leave under the FMLA and gave her a lower performance evaluation rating.

Respondent filed timely exceptions to the Recommended Decision and Order pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200 through 1240. Charging Party filed a timely response. After reviewing the record and exceptions, we

reverse the Administrative Law Judge's recommended findings that Respondent County of Cook violated Section 10(a)(1) of the Act.[1]

The parties agree that upon completion of her annual evaluation Charging Party was due a 3% wage increase effective June 18, 2009, the anniversary of the date she was hired. The parties also agree that because her evaluation was delayed, Charging Party did not receive that wage increase until July 15, 2009. The ALJ found that the delay was an adverse employment action and, being motivated by the union animus of Charging Party's immediate superior, amounted to a violation of Section 10(a)(1) of the Act. We need not address the reason for the delay as we do not find it to be an adverse employment action. Though the definition of an adverse employment action is broad there is no adverse employment action in the absence of some qualitative change in or actual harm to an employee's terms or conditions of employment. Chicago Transit Authority, 30 PERI 9 (IL LRB-LP 2013); City of Chicago. (Department of Buildings), 17 PERI 3012 (IL LLRB 1999); City of Chicago v. Illinois Local Labor Rel. Bd., 182 Ill. App. 3d 588 (1st Dist. 1988). Certainly the record is clear that Charging Party did not receive her annual increase on the anniversary date of her hiring, June 18, 2009, but the record evidence indicates that this is a common occurrence in that other employees have not received their annual increases on their anniversary dates. Moreover, no more than three weeks elapsed before Charging Party received her annual increase retroactive to her anniversary date. In short, there was no qualitative change in Charging Party's terms and conditions of employment nor did she suffer any actual harm.

[1] We leave undisturbed the Administrative Law Judge's conclusions of law and fact regarding the three alleged violations of the Act which she recommended be dismissed. As neither party filed exceptions to the Administrative Law Judge's determination on those allegations, her recommendations stand as non-precedential findings of the Administrative Law Judge, binding only on the parties.

Unlike the delay in Charging Party's annual increase, her layoff/discharge is an adverse employment action. The ALJ concluded that Respondent County's decision was motivated by union animus because Medical Director Arthur Moswin, Charging Party's superior, gave contradictory reasons for that action, at first stating that the layoff would be limited to non-clinical employees and subsequently stating that the layoff would be limited to employees who were not front-line staff. The ALJ, based solely on Charging Party's testimony, concluded that there were 14 non-clinical staff and four non-front line staff, the latter including the Charging Party. The ALJ further concluded that Respondent County was attempting to make it seem that Charging Party was part of a smaller group of employees subject to layoff thereby casting its layoff decision in a more favorable light.

But Charging Party testified that the non-clinical staff included the division director, two substance abuse counselors, two mental health counselors, a psychiatrist, four case managers, the case management supervisor, the data manager, and Charging Party. How Charging Party came to this conclusion is unknown, but it does appear to be based on whether or not an individual possesses some degree or certification in physical medicine. But clinical staff could also reasonably include anyone providing psychiatric or mental health services or anyone providing direct patient care. This ambiguity is reflected in Moswin's testimony which blurred any distinction between non-front-line and non-clinical staff making it unclear whether or not he was referring to the same group and number of employees. Since the record has no consistent definition of non-clinical as opposed to non-front line staff it is not possible to determine whether the number of non-clinical employees was greater than the number of those considered to be non-front line personnel. We therefore cannot conclude that the preponderance of the

evidence demonstrates an inconsistency in the Respondent County's explanation for Charging Party's layoff/discharge.

Nor is the Respondent County's unlawful motivation for that decision evident by the fact that the program grant which funded Charging Party's position had not been cut so Respondent County had no financial reason for its decision. It is undisputed that monies were transferred between the several program grants to make up for deficiencies in a particular grant and that funds were transferred from the program grant supporting Charging Party's position to make up for cuts in other grants. That Respondent County hired someone to fill Charging Party's former position some five months after her layoff/discharge does not belie its claim that a loss in program funds prompted that decision. That new position, as the record reveals, was funded by monies unavailable at the time Charging Party was laid off/discharged.

In light of the above discussion, the evidence supporting the conclusion that Respondent County had no legitimate business reason to layoff or discharge Charging Party is reduced to statements of union animus made by her superiors wholly out of context with, and more than five months prior to, the layoff/discharge. Given this, as well as the evidence that another employee who was not involved in any protected, union activity was also laid off/discharged, Charging Party has failed to prove by a preponderance of the evidence that the Respondent County's decision to layoff/discharge her was motivated by animus towards her exercise of rights protected by the Act. Accordingly, the instant complaint is dismissed.[2]

BY THE LOCAL PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ Robert M. Gierut
Robert M. Gierut, Chairman

[2] Finding no violation of the Act in any event, we find it unnecessary to address whether Respondents County of Cook and Hektoen Institute are joint employers of Charging Party.

/s/ Charles E. Anderson
Charles E. Anderson, Member

/s/ Richard A. Lewis
Richard A. Lewis, Member

Decision made at the Local Panel's public meeting in Chicago, Illinois, on March 11, 2014, written decision issued at Chicago, Illinois, March 26, 2014.

STATE OF ILLINOIS
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ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On January 13, 2010, Rhodda Thomspon (Charging Party or Thompson), filed an unfair labor charge with the Local Panel of the Illinois Labor Relations Board (Board), alleging that, County of Cook/Hektoen Institute, engaged in unfair labor practices within the meaning of Section 10(a) of the Illinois Public Relations Act, 5 ILCS 315 (2012), as amended (Act). The charge was investigated in accordance with Section 11 of the Act, and on September 6, 2011, the Board's Executive Director issued a Complaint for Hearing.[1] On September 15, 2011, the County of Cook (County or Respondent) filed an Answer to the Complaint. On February 3, 2012, the County filed a Motion to Dismiss the Complaint. On February 17, 2012, Thompson filed a Response to the Motion to Dismiss. On February 24, 2012, the County filed a Reply to Thompson's Response to the Motion to Dismiss. On March 5, 2012, I issued an Interim Order Denying Respondent's Motion to Dismiss.

[1] The Complaint was served upon Thompson and the County of Cook. Since Hektoen Institute for Medical Research, L.L.C. was not served, it is not a party to this case, and is not subject to any findings or orders made in this case. See In re Abandonment of Wells, 343 Ill. App. 3d 303 (5th Dist. 2003) (holding that due process prohibits a court or an administrative agency from affecting the interests of a party without having personal jurisdiction over that party); see also First Transit/River Valley Metro, 26 PERI ¶ 38 (IL LRB-SP 2010).

The case was heard in Chicago, Illinois, on April 3 and 4, 2012, at which time the Charging Party presented evidence in support of her allegations and both parties were given an opportunity to participate, adduce relevant evidence, examine witnesses, argue orally, and file written briefs. After full consideration of the parties' stipulations, motions, evidence, arguments and briefs, and upon the entire record of the case, I recommend the following:

I. PRELIMINARY FINDINGS

The parties stipulate and I find that:

1. At all times material, the County has been a public employer within the meaning of Section 3(o) of the Act.

2. At all times material, the County has been subject to the jurisdiction of the Local Panel of the Board, pursuant to Sections 5(b) and 20(b) of the Act.

3. At all times material, Service Employees International Union, Local No. 20, has been a labor organization within the meaning of Section 3(i) of the Act.

4. At all times material, the County employed Dr. Arthur Moswin in the title or classification of Medical Director HIV Program.

5. At all times material, Moswin was an agent of the County, authorized to act on its behalf.

6. At all times material, Angela Wilson was an agent of the County, authorized to act on its behalf.

7. At all times material, County of Cook/Hektoen Institute[2] employed Thompson in the job title or classification of Senior Administrative Assistant.[3]

8. At all times material, Thompson was a public employee within the meaning of Section 3(n) of the Act.

9. In or about June 2009, Thompson filed a grievance pursuant to the Collective Bargaining Agreement, effective September 1, 2006 through September 1, 2010, alleging that Moswin and Wilson failed and/or refused to evaluate Thompson in a timely fashion, placing her job in jeopardy.[4]

10. In or about July 2009, Moswin and Wilson issued Thompson a performance review.

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[2] County of Cook/Hektoen Institute, as provided in the caption.

[3] Despite this stipulation, in its Motion to Dismiss the County argued that it was not Thompson's employer. In the Interim Order, Denying the County's Motion I stated that there was an issue of fact and/or law as to whether Hektoen and the County were Thompson's joint employers.

[4] The County and the Charging Party dispute as to whom the collective bargaining agreement applies.

II. ISSUES AND CONTENTIONS

The first issue is whether the Hektoen Institute for Medical Research, L.L.C. (Hektoen), and the County jointly employed Thompson. Thompson argues she was employed jointly by the County and Hektoen, because the County had extensive control over her hiring, firing, wages, work hours, discipline, and conditions of employment. The County argues that per its agreement with Hektoen, Thompson's position of Senior Administrative Assistant was employed solely by Hektoen, and at most the County supervised Thompson.

The second issue is whether the County violated Section 10(a)(1) of the Act, by: (1) issuing Thompson a written reprimand, (2) denying Thompson's application for leave under the Family and Medical Leave Act (FMLA), (3) refusing to allow Thompson to apply for leave under the FMLA, (4) failing and/or refusing to evaluate Thompson in a timely fashion, (5) evaluating Thompson with an overall ranking markedly lower than her previous evaluations, and (6) terminating Thompson's employment. Thompson argues that the County violated Section 10(a)(1) of the Act because it took these actions in retaliation for her seeking the Union's assistance in acquiring a pay increase and filing grievances. The County responds that it did not act with the necessary animus to violate the Act. Regarding the written warning, the County argues that it was a "memo" not a reprimand, and it was issued to both Thompson and her officemate. Regarding the refusal to allow Thompson to apply for FMLA leave, the County argues that Moswin asked Thompson to take an FMLA day if she could not participate in the team building sessions.[5] The County argues that Thompson's performance review was late because Moswin was too busy running the HIV Program, and he was even further behind in completing other employees' evaluations. The County argues that Moswin's appraisal in the

[5] The County does not address the allegation in the Complaint that Wilson denied Thomson's FMLA request.

review is an accurate depiction of Thompson's inability to listen, inability to acknowledge her own mistakes, and inability to acknowledge her own role in the problems around the office. Regarding Thompson's termination, the County argues that Thompson was terminated because the Program eliminated her position due to a loss in funding and the fact that Thompson had little direct contact with patients.

The final issue is whether Thompson's settlement with Hektoen precludes her from receiving relief under the Act. The County contends that Thompson's settlement with Hektoen precludes her from receiving relief under the Act. The County argues that Thompson has already received any remedies available to her under the Act because she and Hektoen previously entered into a settlement regarding a National Labor Relations Act (NLRA) charge under the same set of facts.[6] Thompson argues that the terms of the NLRA settlement specifically allow for this action against the County, back pay has continued to accumulate, and the settlement did not eliminate her ability to be hired by the County.

III. FINDINGS OF FACT

A. Program Overview

The HIV Program (Program) operates at Provident Hospital of Cook County, and provides free medical, dental, mental health and substance abuse care to approximately 350 HIV positive patients. The Program is organized into clinical staff and non-clinical staff. The clinical staff includes four doctors, and two physician assistants who provide medical treatment to the patients. The non-clinical staff provide non-medical treatment to the patients and include, the Division Director, a medical assistant, two substance abuse counselors, two mental health counselors, a psychiatrist, four case managers, a case management supervisor, a data manager,

[6] National Labor Relations Act (NLRA), 29 U.S.C. §§151, et seq, as amended. The NLRA governs the bargaining relationship between private employers and their employees.

and an administrative assistant. The County employs Dr. Arthur Moswin as the Program's Medical Director, and Angela Wilson, as the Program's Divisional Director of Infectious Disease. Moswin and Wilson supervise the Program and manage all Program employees.

With the exception of Moswin's and Wilson's salaries, the Program is entirely funded by medical grants. In 2009, the Program was funded by ten separate grants, each mandating the type of service the grant provided. Moswin manages the grants, and the County contracts with Hektoen Institute for Medical Research, L.L.C. to act as the fiscal agent of the grants. Hektoen employs everyone in the Program who works under Moswin's and Wilson's supervision.

B. Collective Bargaining Agreement

Hektoen and Service Employees International Union, Local 20 (Union) are parties to a Collective Bargaining Agreement, effective September 1, 2006 through September 1, 2010 (CBA). Thompson's position is included in the bargaining unit covered by the CBA (Unit).[7]

The CBA provides that all members of the Unit's regularly scheduled work hours are scheduled on weekdays between the hours of 6:00 am to 6:00 pm.

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[7] The Unit consists of all full-time and regular part-time non-professional employees, including Senior Administrative Assistant, Licensed Practical Nurse (LPN), LPN Discharge Coordinator, Central Appointment Coordinator, Consortium Coordinator, Lab Technician, Assistant Case Manager, Clinical Coordinator, Data Manager, Senior Research Assistant, Substance Abuse Counselor, Clinical Interviewer, Administrative Assistant, Phlebotomist, Women's Prison Liaison, Volunteer Coordinator, Sickle Cell Service Coordinator, Retention Coordinator, Referral Coordinator, Dental Assistant, Communicable Disease Investigator, Outreach Worker, Service Coordinator Assistant, Adult Youth Organizer, Receptionist Clerk, Patient Advocate, Parent Liaison, Parent Educator, Data Entry/CDI, Data Entry, Case Finder, Assistant Study Coordinator, Youth Peer Worker, Playroom Staff Worker, Childcare Worker, Research Assistant, Peer Educator, and Clerk, employed by Hektoen at John H. Stroger Hospital of Cook County, the Ruth M. Rothstein CORE Center, Provident Hospital, Cook County Bureau of Health Services Administration Building, and Durand Building, and all full-time and regular part-time professional employees employed by Hektoen at Provident Hospital's HIV Program or the CORE Center or CORE related positions located at John H. Stroger Hospital of Cook County, the Cook County Bureau of Health Services Administration Building, or the Durand Building.

The CBA also provides that Hektoen is required to give notice to the Union of the termination date of all grants under which any bargaining unit employee is employed, along with the budget and job descriptions for bargaining unit employees. Prior to the termination of a grant, Hektoen is required to notify the Union and any affected employees of the date of termination. The CBA provides that if Hektoen determines that a reduction in force is necessary, "Hektoen and/or County will meet with the Union to discuss any alternatives to the layoff of any employee(s)."

The CBA's progressive disciplinary policy states:

> Employees who are to be disciplined are entitled to union representation exclusively in any disciplinary proceedings. Employees may only be disciplined for just cause. Discipline must be timely, progressive and accompanied by counseling, depending on the severity of the misconduct. Verbal warnings will be voided after 12 months provided that the employee is not guilty of the same or similar misconduct during that period. Record of the warning shall be physically removed from the employee's personnel file(s) after this 12 month period upon the request of the employee.

A Memorandum of Agreement between the County and Hektoen (Memorandum) is attached to the CBA, which states "Local 20, County, and Hektoen all acknowledge that the peaceful and effective labor relations between Hektoen and the Union require the cooperation of County and its employees." It further states:

> Local 20, County and Hektoen all agree: In the event that a grievance settlement or arbitration award directs that certain actions be taken which is under the direct control of Cook County management staff, County shall take any necessary actions to ensure that its employees and supervisors comply with any grievance settlement reached or arbitration award issued under the terms of the Collective Bargaining Agreement between Hektoen and Local 20. . . .County employees shall participate in the Labor Management meetings between Local 20 and Hektoen, when matters will be discussed that relate to subjects that are under the control of County or its managers or supervisors.

The Labor Management meetings address "staffing, workloads, assignments, service delivery and quality care improvements, education and training." The Memorandum also requires the

County to act "in a manner consistent with . . . its [own] collective bargaining agreements with Local 20" regarding "management attitudes."[8]

C. Thompson's Hiring

In February 2007, Seville Staffing, a staffing agency, hired Thompson as a temporary employee. Seville Staffing referred Thompson to Wilson, to work in the Program as a temporary administrative assistant.

In March 2007, Wilson revised the job description for the Program's Senior Administrative Assistant position. The Senior Administrative Assistant is a Classification Grade 6 employee, subject to the CBA. In April 2007, Moswin and Wilson interviewed Thompson for this position. During the interview Moswin and Wilson explained the job description, salary, and work schedule. Thompson did not interview with anyone from Hektoen. On June 18, 2007, at Wilson's direction, Hektoen hired Thompson as the Senior Administrative Assistant, and conducted Thompson's orientation.

The medical grants that fund the Program did not specifically designate funding for an administrative assistant position. Annually, Moswin and Wilson determined how the administrative assistant salary would be funded from the budget. When she was hired in 2007, 80% of Thompson's salary was paid from the Primary Care grant and 20% was paid from the Dental grant. In 2009, the Primary Care grant funded Thompson's entire salary.

Thompson was the only administrative assistant for the Program. One of Thompson's job duties was to be the "gatekeeper" for the dental program. This required Thompson to explain the dental referral process to patients and instruct them on the required paperwork. Thompson also referred these patients to case managers at the AIDS Foundation of Chicago. In 2007,

[8] The County has a collective bargaining agreement with Local 20, but the record does not identify the employees covered by that agreement.

Thompson referred 108 patients; in 2008, she referred 128 patients; and in 2009, she referred 142 patients.

While Thompson worked under both Wilson and Moswin, Wilson was Thompson's direct supervisor and Thompson reported directly to her. As Thompson's direct supervisor, Wilson calculated and approved Thompson's work time before sending it to the payroll department at Hektoen, who issued Thompson's paychecks.

Wilson was also responsible for conducting Thompson's annual performance review. Wilson conducted Thompson's first annual performance review on June 23, 2008. Wilson rated Thompson with a score of 23.25 out of 25. Thompson received 5 out of 5 total points in her ability to communicate with patients. The standard for such a rating required that she demonstrate a good therapeutic relationship with clients.

D. Thompson's Additional Duties and Salary Adjustment

During Thompson's first year of employment with the Program, the County increased her workload. On May 27, 2008, Thompson requested that Wilson and Moswin conduct a job evaluation to determine if her job duties had increased, which would require an updated job description and a salary adjustment. Wilson denied Thompson's request, explaining that the duties that were expected of the position had not changed. Thompson then requested the Union's assistance in changing her job description to accurately reflect the duties she was performing, and to assist in getting a salary adjustment to compensate her for her additional workload. Pursuant to the CBA, when the job duties of an existing job classification are changed, upon the Union's request, Hektoen is required to discuss the rate of pay for the changed job duties.

At the instruction of Anne Igoe, a Union representative, Thompson stopped performing the job duties that were outside her 2007 job description. In December 2008, through

negotiations with the Union, the County agreed to alter Thompson's job description and give her a $5,000 salary increase to compensate Thompson for her additional workload. Moswin and Wilson prepared the updated job description, which detailed Thompson's additional duties. During the job evaluation negotiations, Thompson's relationships with Program employees became strained. Igoe noted that she thought that Moswin and Wilson expressed unprofessional hostility toward Thompson.

E. Unsanitary Work Space

In or around January 2009, Thompson filed a grievance with the Union (unsanitary workplace grievance) regarding the cleanliness of the office she shared with data manager, Amthul Papa.[9] On January 20, 2009, Wilson met with Thompson and Papa, and directed them to keep the office clean. Moswin sent an e-mail to Thompson and Papa, instructing them to attend a meeting with Hektoen regarding the grievance, and invited the Union to attend.[10]

On February 5, 2009, Wilson issued Thompson and Papa a formal warning in the form of a memo regarding what Wilson identified as a "hostile environment." The warning was sent to Papa and Thompson, and copied to Moswin, Hektoen's Director of Human Resources Berry Merriweather, and the Division Chairman of Infectious Diseases Joseph Pulvirenti. The warning discussed the "cleanliness and emotional conditions" within the Program office. The warning was addressed to Thompson and Papa, but did not state whether the specific directives were in response to any one person's behavior. The warning stated that "[t]he office is to be kept clean and neat at all times," and created a rotating schedule for Thompson and Papa to "clean and

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[9] In 2007, when Thompson began working as a temporary employee, Thompson shared an office with Papa. In February 2008, Wilson and Moswin granted Thompson's request to move to a different office. In March 2008, Thompson was directed to again share an office with Papa.

[10] The testimony over whether this was a grievance or a complaint is contradictory. The subject of this e-mail is "Rhodda Thompson Grievance Step 2." The manner in which she involved the Union does not affect the analysis. See City of Chicago (Dep't of Police), 8 PERI ¶ 3010 (IL LLRB ALJ 1992); *infra* footnote 18.

stock the common areas." The warning prohibited specific unsanitary acts, such as "gum stuck on anything other than in the garbage can; [p]erishable foods left over night; dirty lab coats in the office," etc. Regarding the "emotional conditions," Wilson stated:

> Because of your individual behaviors, a hostile, unacceptable environment has evolved within the office. Other project personnel are complaining about this situation and your respective behaviors. This constant nit picking and whining will not be tolerated . . . . [I]t is my expectation that you both behave in a professional manner and respect each other . . . . Personal phone calls and union business during work hours is prohibited . . . . Name calling is out and will result in progressive discipline . . . . [Y]ou must get along or you will be subject to termination. Uncontrolled anger and emotional outbursts also will not be tolerated . . . . You may consider this a formal warning.

On February 21, 2009, Thompson filed a memo with Merriweather, requesting that the formal warning be rescinded. In the memo, Thompson stated that Wilson's warning did not indicate whether Thompson or Papa was responsible for the particular actions referenced in the warning. Thompson stated that she was "unfairly included in circumstances [she] did not create and offenses [she] did not commit." In addition, Thompson argued that Wilson's directives regarding the cleanliness of the office were reiterations of Wilson's statements to Papa on January 20, and Thompson's previous complaints to Moswin regarding Papa's habits. Thompson also contended that Wilson was already aware that Thompson had been completing the cleaning tasks outlined in the warning. In addition, Thompson argued that the work environment was hostile before Thompson began working at the Program and thus, Wilson's allegation that Thompson and Papa's work relationship was the cause of the hostile work environment was unfounded. Thompson listed specific examples of other employees' actions to support her claim that she was not cause the hostile environment.

In February 2009, Wilson and Moswin instructed Thompson to move to a different office than the one she shared with Papa. On March 31, 2009, Wilson rescinded the "hostile environment" warning filed against Thompson.[11] Merriweather closed the matter in April 2009.

F. FMLA Requests

On February 8 and 9, 2009, Moswin required the entire Program staff to attend team building sessions in order to build a better working environment. Moswin did not allow Program staff to take vacation, holiday, or "any other sort of time off" on the days of the team building sessions. At one of the sessions as part of a conflict resolution exercise, Thompson and another employee were directed to address the issues they were having, while the other Program staff listened. This resulted in a verbal altercation between Thompson and the employee. Soon afterward, Thompson told Moswin that she found the sessions stressful and did not want to participate in future sessions.

Pursuant to the CBA, Hektoen was required to grant employees with leaves of absence pursuant to its FMLA policy. Employees were to contact Merriweather regarding any FMLA absences. On March 12, 2009, Merriweather informed Wilson that Thompson was receiving medical attention for a condition covered by the "[i]ntermittent FMLA on file," and that Thompson's health care provider requested that Thompson be excused from future team building sessions. On May 28, 2009, Wilson sent an e-mail to Merriweather, Thompson, and Moswin regarding Thompson's FMLA requests. In the email, Wilson expressed her belief that Thompson was abusing the FMLA policy by requesting every Friday off. Wilson stated that she could not "think of anything that [Thompson] could legitimately be engaged in for 8 hour[s] every Friday"

[11] The record does not indicate whether Wilson rescinded the warning against Papa.

On June 8, 2009, Moswin informed Thompson that if she was not planning on participating in the team building sessions, she should "take those days as FMLA days." Thompson did not attend the team building session on June 24, 2009, but instead reported to Provident Hospital to perform her regular work duties. That same day, Thompson filed a formal grievance (FMLA grievance) alleging that Wilson's allegations regarding FMLA abuse were "defamatory." The grievance also stated that Wilson and Moswin were attempting to interfere with Thompson's rights under the FMLA. On July 1, 2009, Wilson "recanted and withdrew her subjective concerns regarding [Thompson's] intermittent FMLA."

G. 2009 Performance Review

The CBA provides that all employees are to receive an annual 3% salary increase on their anniversary date during the first three years of employment. The County is required to complete the employee's annual performance review before Hektoen can implement the increase. The purpose of the performance review is to "[c]larify employee job responsibilities and performance standards and provide direction for employee development and/or performance improvement."

On June 18, 2009, Thompson was due to receive her annual 3% increase. On June 22, 2009, Thompson, Wilson, and representatives from Hektoen's human resources department exchanged a series of e-mails regarding Thompson's annual performance review. Wilson informed Thompson that she had not completed Thompson's performance review, and stated that "if I had completed anything I do not need you to request it, you would have it." Hektoen also informed Thompson that the County had not submitted a completed performance review for Thompson.

On June 23, 2009, Union representative Javetta Wofford-Green spoke with Alvaro Espino, a human resources specialist from Hektoen, regarding the status of Thompson's

performance review. Espino told Wofford-Green that Wilson "did not want to get involved" with the review, Wilson would not be completing Thompson's performance review, and Moswin would be completing the review instead of Wilson.

On June 24, 2009, Thompson filed a grievance (late performance review grievance) with the Union challenging Wilson's failure to evaluate Thompson in a timely manner. On June 25, 2009, Wilson left for vacation, and returned on or about August 1, 2009. Before Wilson left for vacation, she asked Moswin to complete Thompson's evaluation, and Moswin agreed. On June 25, 2009, Moswin informed Thompson that he would be completing Thompson's performance review instead of Wilson. He also explained to Thompson that he needed to finish several other employees' evaluations before he could finish Thompson's evaluation, since those employees' evaluations were more overdue than Thompson's evaluation. Moswin also informed Thompson that her late performance review grievance was "harassment" and he did not "appreciate it when co-workers try to resort to intimidation." He also thanked Thompson for her "understanding and restraint."

On July 1, 2009, Wilson provided a written response to the late performance review grievance stating that she did refuse to complete Thompson's evaluation because "Moswin and I agreed that he would complete it, this grievance represents harassment, [it] is not the first time and will no longer be tolerated."

On or about June 30, 2009, Moswin completed Thompson's performance review. On June 30, 2009, Moswin and Thompson discussed the performance review. Moswin told Thompson, that he did not "like the intimidation tactics and threats [she's] used," she "filed grievances when [they] could have talked about it, and [she doesn't] let grievances go." Thompson objected that there was no proof for some of Moswin's assessments on the

performance review. Moswin agreed to modify the review based upon those objections, and submitted the modified review (2009 Review) to Thompson on July 1, 2009.

In the 2009 Review, Moswin gave Thompson a rating of 13.05 out of a total score of 25. Moswin rated Thompson a 1 in the category "Displays ability to analyze open issues and resolve them."[12] He provided the following comments: "[Thompson h]ad major issues with her office mate and was unable to resolve them in a satisfactory manner. When supervisor intervened [Thompson] took offense and took it very personally." Moswin also rated Thompson a 1 in "Communication skills." He commented: "[Thompson e]xhibits little interest in communicating or interacting with the team. In some cases has filed grievances with the union for issues where better communications, and/or more patience, would accomplish more." Moswin also rated Thompson a 1 in "Professionalism," and commented, "[Thompson h]as developed an attitude which is difficult to work with. Has alienated many staff members including her immediate supervisor. Seems to think the status quo is acceptable, or at least does not see her role in any of this." Moswin also rated Thompson a 1 in "Ability to work with staff and clients." He provided the following comments: "[Thompson h]as had conflicts with several team members, including her supervisor. Needs to work harder at conflict resolution." In addition, Moswin rated Thompson a 1 in "Accepts feedback," and commented "[Thompson f]requently believes it is the 'fault' of the other person involved. Does not accept insight into her role in team disruption." Under "Developmental Strategy" Moswin commented:

> Although she has expressed frustration with the current situation and may feel powerless in conflicts with her supervisor, [Thompson] needs to be more aware of her own contribution to any conflict and try to resolve them through frank, un-emotional communication. Needs to become more of a team player and move past grievances. [Thompson n]eeds to mend (or at least attempt mending)

[12] All individual ratings are on a 1 to 5 scale, with 5 being the highest.

> relationship with her supervisor. The current situation is unsatisfactory. Maintain a professional and non-intimidating demeanor at work.

On July 15, 2009, Thompson received a 3% salary increase. In or about July 2009, Thompson submitted to Hektoen and Moswin a written response to the 2009 Review. On July 30, 2009, Thompson filed a grievance (negative review grievance) with the Union over her 2009 Review. The negative review grievance alleged that the 2009 Review reflected "a personal prejudice bias" by Wilson and Moswin, and that the poor ratings "lack just cause." On August 3, 2009, a grievance meeting was held pursuant to the CBA. At the meeting, Moswin referred to Thompson as "toxic" and stated that he was "sick and tired of her filing grievances." Moswin and Wofford-Green also stated that they believed that the conflict between Thompson and Wilson began because "[Wilson] was angry that [Thompson] received a . . . salary adjustment."

Another grievance meeting was held on August 10, 2009, in order for Wilson to attend. At that meeting, Merriweather informed Thompson and Wofford-Green that Wilson and Moswin had agreed to revise the 2009 Review.

On or about, August 25, 2009, Thompson received a revised performance review (Revised 2009 Review) with a rating of 19.3 out of 25. The comments in the Revised 2009 Review, under "Developmental Strategy," stated:

> Communication Skills require work. She needs to be more aware of her own contribution to any conflict, and better accept (constructive) critical feedback. The HIV Program is often a stressful department with many varied and different personalities. [Thompson] knew this when she took the job and she had first hand experience with the issues as a temp. She does not handle stress well. She needs to work on conflict resolution, anger management, interpersonal skills (ability to work with others). Maintain a professional demeanor at work at all times. Needs to be more of a team player and move past previous grievances. . . . . Needs to mend or at least work at mending [the] relationship with her supervisor. The current situation is unsatisfactory.

In or around October 2009, Wilson filed a complaint against the Union and Wofford-Green relating to Wofford-Green's activities as a Union representative for the Program employees.[13]

H. NLRB Charge

On November 13, 2009, Thompson filed a charge with the National Labor Relations Board (NLRB) alleging that Hektoen, through Moswin and Wilson, "threatened Thompson with discharge and reprisals for filing a grievance, . . . and submitted unsatisfactory performance appraisals because Thompson filed grievances" in violation of the NLRA. On the same day, Wilson informed the Program employees "due to the recent $50k loss [of grant funds] from our operational budget," Wilson and Moswin were "working on the restructuring of some programmatic areas and potential workforce reductions to adjust for the loss" and "the entire program [was] being evaluated."

I. Thompson's Termination

Toward the end of 2009, the Program lost approximately $120,000 to $140,000 in grant funds. Two grants were not renewed. A third grant received reduced funding from previous years. The funding for the Primary Care grant was not affected.

On December 2, 2009, Wilson and Moswin notified Thompson that she was being laid off because the Program "lost grants," and could "not afford [Thompson's] position." Wilson and Moswin stated that because they needed the clinical service providers more than non-clinical service providers, they decided to layoff non-clinical service providers and were "phasing out" the Administrative Assistant position. On December 2, 2009, Merriweather sent Thompson a letter entitled "Layoff Notice (Non Clinical Staff)." The notice informed Thompson that since "[t]he Provident grant operational budget has los[t] substantial grant dollars, which help support

[13] The specific content of the complaint was not included in the record.

[her] salary; . . . [Thompson's] employment . . . would end on January 15, 2010." Along with Thompson, Case Management Supervisor Minnie Carr was also laid off. As a supervisor, Carr was not a member of the collective bargaining unit.

J. Post Termination

On December 31, 2009, with the assistance of Wofford-Green, Thompson filed a grievance (termination grievance) alleging she was "improperly laid off" in violation of the CBA's provisions on respect and dignity, promotion and layoff preference, reduction in force, grant applications, and discrimination.

Moswin testified at hearing that he had decided to lay off employees that were not "frontline" staff because they had little direct contact with patients. Moswin stated that he determined the non-frontline staff employees were Thompson, Carr, Papa, and Health Educator William Anderson.[14]

In January 2010, Wilson e-mailed hospital security informing them that Thompson was terminated, was resisting the layoff, and that Thompson was claiming that she was being retaliated against because of her grievances. Wilson informed security that Thompson had told other staff members, "no matter what [Thompson] has been told she will be to work on Tuesday."[15] Wilson also told security that Thompson was "threatening to sue both Hektoen and Provident," and had "been to the NLRB with the retaliation claims." Wilson told security that the reason Thompson and Carr were laid off was because "[w]e chose to keep client providers over a clerical. We are also laying off a Manager as of today for the same reasons - little direct client contact." Wilson stated to security that the reason for her e-mail was because Thompson

[14] Anderson's role was split as a health educator and also as a supervisor of the other health educators, with his salary paid accordingly.
[15] Thompson's last day was Monday, January 15, 2010.

"was copying documents" and Wilson was concerned for Thompson's "personal well being."[16] As a result, hospital security staff issued a security alert banning Thompson from the hospital. A security alert was not issued for Carr, who was laid off on the same date. Thompson became aware of the security alert when she arrived for her scheduled grievance meeting with Merriweather and Wilson, and security would not allow her to enter the hospital.

The Program lost more funding following Thompson's termination, and as of the date of the hearing before the Board, employed 14 full-time staff members, and one part-time staff member. After Thompson was terminated, Wilson took over Thompson's functions as the gate-keeper of the dental program. In May 2010, a Program Assistant, Classification Grade 4, was hired to work at the Program. With the exception of the dental program, the Program Assistant conducts the same tasks that Thompson conducted while she was employed as a Senior Administrative Assistant. The Program Assistant shares an office with Papa, and reports to Wilson.

Also in May 2010, Thompson and Hektoen settled the NLRB charge against Hektoen. The settlement agreement included a "non-admission" clause that stated that Hektoen "does not admit to have violated the National Labor Relations Act or to being a joint employer with Provident Hospital of Cook County." The settlement agreement included a posting requirement and an award of back pay. The back pay provision awarded Thompson approximately one year

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[16] Wilson forwarded the e-mail she had sent to security to Wofford-Green. Wilson redacted certain information, explaining, "I have deleted some of my personal comments in this dialog because I have gotten into difficulty with Rhodda in the past for expressing my personal concerns/opinion. I said nothing bad, just a couple of personal expressions that we all add to documents that are supposed to be confidential and these emails were confidential and should not have been shared." Within the e-mail Wilson explained the reasons for the redactions and summarized the contents, "Deleted the one line sentence here which essentially referred to the fact that she may act out . . . . [d]eleted my last personal comments . . . . [e]ssentially stated that staff are afraid of her and do not want to be identified and that we have been trying to deal with this overtime. Also expressed my personal concerns regarding my well being in this matter."

annual salary as a "make whole" remedy. The following are the pertinent portions of the settlement agreement:

> **Scope of the Agreement**: This Agreement settles only the allegations in the above captioned case, and does not, except as set forth in paragraph 3 of the Attachment below, constitute a settlement of any other cases or matters, including any charges or allegations by Rhodda Thompson against Provident Hospital of Cook County. In particular, notwithstanding this Settlement Agreement, Rhodda Thompson may proceed with her charge against Provident Hospital of Cook County currently pending at the Illinois Labor Relations Board.

[Paragraph 3:]

> **Waiver of Reinstatement:** The parties acknowledge that Rhodda Thompson has executed a waiver of reinstatement to her position at Hektoen Institute and further has waived any right to seek reinstatement to Hektoen Institute, including as part of her pending case against Provident Hospital of Cook County at the Illinois Labor Relations Board . . . . However, nothing in this Agreement shall prevent Rhodda Thompson from seeking reinstatement directly from Provident Hospital of Cook County.

IV. DISCUSSION AND ANALYSIS

A. Joint Employer

The County and Hektoen were Thompson's joint employers because the County exercised significant control over Thompson's terms and conditions of employment.

Section 3(o) of the Act defines a public employer as "the State of Illinois; any political subdivision of the State[;] . . . . any person acting within the scope of his or her authority, express or implied, on behalf of [the State of Illinois or any political subdivision of the State] in dealing with its employees." The test for the existence of joint employers is "whether two or more employers exert significant control over the same employees-where from the evidence it can be shown that they share or co-determine those matters governing essential terms and conditions of employment." Am. Fed'n of State, Cnty. and Mun. Emps. Council 31 v. Ill. Labor Rel. Bd., 216 Ill. 2d 569 (2005) (commonly referred to as "Wexford") quoting Orenic v. Ill. State Labor Rel.

Bd., 127 Ill. 2d 453, 474 (1989), quoting Nat'l Labor Rel. Bd. v. Browning-Ferris Indust. of Penn., Inc., 691 F.2d 1117, 1124 (3rd Cir. 1982); see also Vill. of Winfield v. Ill. State Labor Rel. Bd., 176 Ill. 2d 54, 60 (1997).

Relevant factors to consider in determining whether an entity is a joint employer include the entity's role in "hiring and firing; promotions and demotions; setting wages, work hours, and other terms and conditions of employment; discipline; and actual day-to-day supervision and direction of employees on the job." Wexford, 216 Ill. 2d at 579, citing Orenic, 127 Ill. 2d at 475. "An important consideration in determining whether a particular entity is an employer is the extent to which that entity is necessary to create an effective bargaining relationship." Wexford, 216 Ill. 2d at 579, quoting Vill. of Winfield, 176 Ill. 2d at 60.

In applying Wexford, the Board has found that the fact that an employer is a private entity does not "necessarily eliminate the existence of a joint employer situation, or that the existence of the [private employer] entirely removes [the Board's] authority and obligation to address an alleged unfair labor practice." Chief Judge of the Cir. Crt. of Cook Cnty. (Cook Cnty. Juv. Temp. Det. Ctr.), 29 PERI ¶ 34 (IL LRB-SP 2012) (reversing the dismissal and remanding the case for hearing regarding the possible joint employer relationship).

Here, the County exerted "significant control" over Thompson's terms and conditions of employment. With respect to Thompson's hiring and firing, the County made the decision to hire Thompson, and the County made the decision to terminate Thompson. Wilson and Moswin were County employees and agents, authorized to act on the County's behalf. Wilson updated the Senior Administrative Assistant position in March 2007, after Thompson had been working for the program as a temporary administrative employee. Moswin and Wilson conducted Thompson's interview without Hektoen present. Hektoen's only role in Thompson's hiring was

to conduct Thompson's orientation, which Hektoen did only after Moswin and Wilson decided to hire her.

The CBA also provides that the County has significant control over the Program's staffing needs. The CBA states that Hektoen, the Union, and the County should discuss staffing at the Labor Management meetings. In regard to a reduction in force, the CBA specifies that "Hektoen and/or County will meet with the Union to discuss any alternative to the layoff of any employee(s)." The County made the decision to terminate Thompson, not Hektoen. Moswin and Wilson personally notified Thompson of her termination. Thompson only received the layoff notice from Hektoen after her meeting with County employees, Moswin and Wilson. Thus, the County had significant control over hiring Thompson and terminating her.

With respect to setting wages, Thompson's wages were subject to both the CBA between Hektoen and the Union, and Moswin's approval. While Hektoen paid Thompson's salary through medical grants provided to the Program, the County determined the amount of her salary. The County set Thompson's initial salary, and Moswin approved her salary adjustment. Thompson's 2008 salary adjustment was a result of negotiation meetings that both Hektoen and the County attended. Thompson's work hours were subject to the CBA and determined by the County. The CBA specified that the work period is eight hours, between 6am to 6pm. The County determined Thompson's specific work hours within the parameters of the CBA.

With respect to "other terms and conditions of employment" the County determined Thompson's work space and specific work duties. Thompson originally shared an office with Papa. The County instructed Thompson to move to a different office after she grieved to the Union about Papa's unsanitary habits. The County also increased Thompson's duties that led to the altered job description created by Moswin. Thompson was under the complete day-to-day

supervision and direction of the County. While Wilson was Thompson's direct supervisor, Thompson reported to both Wilson and Moswin. Wilson conducted Thompson's 2008 Review, Moswin completed her 2009 Review, and both Wilson and Moswin completed Thompson's Revised 2009 Review.

With respect to discipline, the County was responsible for disciplinary action against Thompson. The only clear instance of discipline on the record is when Wilson issued Thompson the formal written warning. As an agent for the County, Wilson was acting on its behalf when she disciplined Thompson.

Further, the County was necessary to create an effective bargaining relationship between Hektoen and Thompson. The CBA's Memorandum acknowledges that the County is required for "peaceful and effective labor relations between Hektoen and the Union." The County's involvement has been demonstrated in several ways. Wofford-Green testified that she worked with Moswin and Wilson to ensure that they were complying with the CBA. Moswin and Wilson were also involved in the grievance process. Moswin directed Thompson and Papa to attend a meeting regarding the workspace grievance. Wilson filed a written response to Thompson's untimely evaluation grievance. Moswin and Wilson also attended a meeting with Thompson, Hektoen, and the Union regarding Thompson's unfair evaluation grievance. In fact, the meeting was rescheduled so that Wilson could attend. Hektoen could not institute the contractually mandated 3% salary increase as required by the CBA without the County completing Thompson's performance review. These actions demonstrate that the County was necessary in creating an effective bargaining relationship between Hektoen and Thompson.

Finally, the fact that Hektoen is a private entity does not necessarily eliminate a joint employer relationship with the County, because the joint employer relationship is determined by the degree of control over the employee.

The County exercised control over Thompson through its agents, Wilson and Moswin, when it conducted the interview and chose to hire Thompson, directed Hektoen to hire Thompson, increased Thompson's workload, chose Thompson's work space, and when it decided to terminate Thompson. The provisions of the CBA and the record as a whole reflect that the County exercised the requisite control necessary to show that Hektoen and County had a joint employer relationship. Therefore, Thompson was jointly employed by Hektoen and the County.

B. Section 10(a)(1) Violations

The County violated Section 10(a)(1) of the Act when it refused to evaluate Thompson in a timely manner, and terminated her employment, but did not violate the Act when it issued Thompson a formal warning, denied her application for leave under the FMLA, refused to allow her to apply for leave under the FMLA, nor when it evaluated her with an overall ranking markedly lower than her previous evaluation.

A public employer violates Section 10(a)(1) of the Act when it, or its agents "interfere with, restrain or coerce public employees in the exercise of the rights guaranteed" under the Act. The employer's motive or intention is usually not considered in a Section 10(a)(1) violation, unless an alleged adverse employment action is taken against an employee for engaging in protected, concerted or union activity under the Act. Chicago Transit Auth., 30 PERI ¶ 9 (IL LRB-LP 2013). Then the employer's motive is examined in the same manner as in cases arising under Section 10(a)(2) of the Act. Id.; Chicago Park Dist., 7 PERI ¶ 3021 (IL LLRB 1991).

To demonstrate that she has suffered an adverse employment action the employee does not need to show that the action caused adverse tangible results or adverse financial consequences. City of Chicago v. Ill. Local Labor Rel. Bd., 182 Ill. App. 3d 588, 594-95 (1st Dist. 1988). While the definition is generous, the employee must demonstrate some sort of real harm in that the adverse action had a negative effect on her terms and conditions of employment. City of Lake Forest, 29 PERI ¶ 52 (IL LRB-SP 2012) quoting Atanus v. Perry, 520 F.3d 662, 675 (7th Cir. 2008); Chicago Park Dist. (Grant Park Music Festival), 26 PERI ¶ 76 (IL LRB-LP 2010) (upholding the finding that a change in hours is an adverse action). Examples of adverse employment action include, but are not limited to "discharge, discipline, assignment to more onerous duties or working conditions, layoff, reduction in pay, hours or benefits, imposition of new working conditions or denial of advancement." Ill. Dep't of Cent Mgmt. Servs. (Dep't of Employment Security), 11 PERI ¶ 2022 (IL SLRB 1995).

Once the action is found to be sufficiently adverse, then the employer's motive is examined. To establish a *prima facie* case under section 10(a)(1) of the Act, the charging party must show, by a preponderance of the evidence, that 1) she was engaged in union or other statutorily protected activity, 2) her employer was aware of the nature of her conduct, and 3) the employer took adverse action against her for discriminatory reasons, i.e. animus toward her participation in such union activities. Pace Suburban Bus Div. of Reg'l Transp. Auth. v. Ill. Labor Rel. Bd., 406 Ill. App. 3d 484, 495 (1st Dist. 2010), citing City of Burbank v. Ill. State Labor Rel. Bd., 128 Ill. 2d 335, 344 (1989). The third element is satisfied when the employee establishes the protected activity was a substantial or motivating factor in the employer's adverse action against the employee. Pace, 406 Ill. App. 3d at 495 citing Speed Dist 802, 392 Ill. App. 3d 628, 636 (1st Dist. 2009).

In City of Burbank, the Illinois Supreme Court held that discriminatory motive can be inferred by direct or circumstantial evidence. 128 Ill. 2d at 345. The Court went on to state that a discriminatory motive can be demonstrated through the following factors: an employer's expressed hostility toward unionization, coupled with the knowledge of the employee's union activities; the timing of the adverse action; a pattern of disparate treatment of those engaging in union activity; shifting explanations for the adverse actions; and inconsistency in the reasons given for its action against the employee and the employer's other actions. Id. at 346. Mere proof of "union animus," independent of an examination into "causation," is not sufficient to establish discrimination. City of Springfield, 6 PERI ¶ 2004 (IL SLRB 1989).

Once a charging party establishes a *prima facie* case, the burden shifts to the employer to demonstrate that it would have taken the same action for legitimate business reasons even without the discriminatory motive. City of Burbank, 128 Ill. 2d at 346. However, simply proffering a legitimate business reason for the adverse action does not satisfy this burden. Id. The fact finder must determine whether the proffered reason is bona fide or pretextual. Id. If the employer did not actually rely on the proffered reason, then the reason is pretextual and the inquiry is complete. Id. Conversely, if the employer advances a legitimate reason and is found to have relied upon that reason, then the inquiry continues and is characterized as dual motive. Id. at 347. The employer then must demonstrate by a preponderance of the evidence that it would have taken the same adverse action notwithstanding the employee's union activity. Id.

1. Formal Warning

The County did not violate section 10(a)(1) of the Act when it issued Thompson a formal warning.

The threshold issue is whether the formal warning that Wilson issued to Thompson and Papa, was an adverse employment action. See Chicago Transit Auth., 30 PERI ¶9 (IL LRB-LP 2013); Chicago Park Dist., 7 PERI ¶ 3021 (IL LLRB 1991). The warning was adverse because it negatively and directly affected Thompson's work and welfare. See Univ. of Ill., 361 Ill. App. 3d at 266; Vienna School Dist., 162 Ill. App. 3d at 507. The Respondent argues that the memo was a directive and not a formal warning because it was not part of the progressive disciplinary policy. The facts do not support this argument. Wilson ended the memo with, "[y]ou may consider this a formal warning." Under the CBA's progressive disciplinary policy, if an employee received a verbal warning, a record of the warning remained in the employee's personnel file, and was void after 12 months only if the employee did not engage in the same or similar conduct again. Moswin testified that this policy applied to the formal warning. Thus, the warning was in effect a verbal warning consistent with the progressive disciplinary policy.

In City of Chicago (Dep't of Bldg.), a written reprimand was not an adverse action because the reprimand was never placed in the employee's personnel file. 15 PERI ¶ 3012 (IL LLRB 1999). In this case, the warning was issued on February 5, 2009; Wilson did not rescind her warning until March 31, 2009. Per Moswin, until Wilson rescinded her warning, it was retained in Thompson's personnel file. The formal warning was an adverse action against Thompson because under the CBA's progressive disciplinary policy, until the reprimand was rescinded it escalated any future disciplinary actions, placing Thompson's job in jeopardy.

Since the formal warning was adverse, the next step is to analyze whether Thompson has established a *prima facie* case in that Thompson's union activity was the reason for the formal warning. First, Thompson was engaged in protected activity when she filed a grievance with the Union about the unclean work space, and when she requested the Union's assistance in receiving

a salary adjustment. Second, the County was aware of the Union's assistance because Moswin negotiated for the County regarding the salary adjustment and Wilson was informed of the ongoing negotiations and resulting salary adjustment. Finally, Wilson issued Thompson the written warning because of Thompson's involvement with the Union.

The warning was written in response to issues Thompson was having with her officemate, and was reflective of Wilson's increasingly antagonistic attitude toward Thompson. The first prong is satisfied, because Thompson exercised her union rights under the CBA by filing a grievance with the Union about the cleanliness of her workspace, and getting their assistance in acquiring a salary adjustment.[17] It is well settled that filing grievances is a protected union activity. Vill. of Calumet Pk., 22 PERI ¶ 23 (IL LRB-SP 2006) citing NLRB v. City Disposal Sys. Inc., 465 U.S. 822, 829 (1984); State of Ill. (Dep't of Human Servs., Ann Kiley Dev. Ctr.), 20 PERI ¶ 73 (IL SLRB 2004). Also, with the assistance of the Union, Thompson had successfully negotiated enforcement of the provision in the CBA requiring Thompson's job description and salary be adjusted. Employees engage in protected activity when they invoke contractual rights because that activity is a "direct extension of the collective bargaining process." Speed Dist. 802, 392 Ill. App. 3d at 643, citing City Disposal, 465 U.S. at 829; see Cook and Cook Cnty. Sheriff, 14 PERI ¶ 3005 (IL LLRB 1997).

The second prong is satisfied, because, while there is no evidence that Wilson was aware that Thompson had requested the Union's assistance in the work space grievance prior to issuing

[17] Even if a formal grievance was not filed and Thompson informally "complained" the activity remains protected. See Cook and Cook Cnty. Sheriff, 14 PERI ¶ 3005 (IL LLRB 1997) (oral statement of deputies' complaints about assignments to a supervisor constituted protected activity); City of Chicago (Dep't of Police), 8 PERI ¶ 3010 (IL LLRB ALJ 1992) (finding that a memo constituted protected activity even though it did not take the form of a technical grievance filing).

the formal warning,[18] Wilson was aware that Thompson was seeking the Union's assistance in procuring a job description correction and salary adjustment. Wilson knew that the Union was advocating for Thompson's job description correction and salary adjustment. Moswin made the final determination over Thompson' salary adjustment. The salary adjustment was a result of several months of negotiations. While there is no record that Wilson attended these meetings, there is evidence that she was aware of the negotiations, and was aware that Thompson ultimately received a salary adjustment. In October 2008, Anne Igoe emailed Moswin and Wilson requesting that they schedule a meeting with Wofford-Green to continue the negotiations. Wofford-Green testified that she and Moswin believed that the tension between Thompson and Wilson was because Wilson was angry over Thompson's salary adjustment. Also, the formal warning reprimanded Papa and Thompson for conducting union business during work hours. Thus, Wilson was aware that Thompson was in engaging in union activity.

In order to satisfy the third element of the *prima facie* case, Thompson must show that her union activity was a substantial or motivating factor in Wilson's reason for issuing the formal warning. See Pace, 406 Ill. App. 3d at 495, citing Speed Dist. 802, 392 Ill. App. 3d at 636. As noted above, discriminatory motive can be inferred by direct or circumstantial evidence. City of Burbank, 128 Ill. 2d 335 at 345. Using the factors outlined in the City of Burbank, I find that the third element is satisfied. Id., at 346. Here, Wilson specifically prohibited union business during work hours is direct evidence that Thompson's union activity was a motivating factor in Wilson reason for issuing the formal warning. Wilson's expressed hostility toward the Union, coupled

[18] When Wilson became aware of Thompson's grievance is unclear. As Thompson's direct supervisor, Wilson should be the person to speak to in the first step of a grievance, but Wofford-Green testified that she communicated directly with Moswin and that Wilson did not want to be involved in any meetings with the Union. Moswin sent an e-mail titled "Rhodda Thompson Grievance Step 2" to Thompson and Papa, Wilson was not copied. Wilson was present in a February meeting regarding Thompson's memo, which objected to the formal warning.

with her knowledge of Thompson's union activities is a circumstantial factor that supports Thompson's allegation that the warning was issued because of her union activity. The timing is not suspicious because there is no evidence that Wilson was aware that Thompson had filed a grievance prior to issuing this warning, and the salary negotiation had concluded nearly two months prior to the warning. Further, there is no pattern of disparate treatment because Wilson issued the warning to both Thompson and Papa, and they are both Union members. However, Moswin's testimony that he was unaware that conducting union business during work hours was prohibited shows inconsistencies in the issuance of the warning and the County's prior practices. The County's explanation for this reprimand has been consistent, even though Wilson rescinded the warning. Thompson's response, claiming that the warning was unfair, was the basis for the warnings rescission. Thompson argued that she was already completing the cleaning tasks outlined in the warning and she was not the cause of the hostile work environment, but did not take exception to the prohibition of union business. At the Board hearing, Wofford-Green testified that the warning was rescinded because there was no proof that Thompson had engaged in any of the conduct outlined in the warning, not because the prohibition of union business was inappropriate. I find that Wilson's reprimand for activity that was not prohibited prior to her warning is direct evidence of her discriminatory motive and is supported circumstantially by Wilson's expressed hostility toward the Union, and coupled with her knowledge of Thompson's activity, sufficiently demonstrate that Thompson's union activity was a motivating factor for the warning. Thus, Thompson established a *prima facie* case for discrimination.

The burden now shifts to the County to demonstrate that it had a legitimate business reason for issuing the formal warning. See Id. If the County can demonstrate that it actually relied upon this reason, then it must prove by a preponderance of the evidence that it would have

issued the formal warning without Thompson's union activities. See Id. The County argues that the warning was issued to both Thompson and Papa, the language in the formal warning addressed the uncleanliness of their shared office, and Thompson and Papa's hostility toward each other was affecting the entire Program. The County demonstrated that Wilson actually relied on this reason because the majority of the warning addresses the cleanliness of the office. It is the warning and its impact under the progressive disciplinary policy that is adverse, not necessarily its specific contents. I find that Wilson would have issued the warning to keep the office clean to Thompson and Papa notwithstanding Thompson's union activity. Thus, the County has met its burden that it would have taken the same adverse action absent Thompson's union activity. Therefore, the County did not violate section 10(a)(1) of the act when it issued Thompson the formal warning.

2. FMLA

The County did not violate section 10(a)(1) of the Act when it allegedly denied Thompson's application for leave under the FMLA and refused to allow Thompson to apply for leave under the FMLA because the record does not support that the County took such actions.

I find that the record lacks sufficient evidence to support Thompson's allegation that the County denied her FMLA request. The Complaint states, "[i]n or about May 2009, Wilson denied Thompson's application for leave under the provisions of the Family Medical Leave Act (FMLA)." In May 2009, Wilson wrote an e-mail to Merriweather accusing Thompson of abusing the FMLA because Thompson had requested to have every Friday off. Thompson testified that she received this e-mail, and that its contents were later rescinded, but she did not testify that the e-mail was a denial, the basis, or the cause of the denial of her FMLA request. Wofford-Green testified that she was involved in Wilson rescinding the e-mail, but she did not

testify to what effect, if any, the e-mail had on Thompson's FMLA request. The record also does not indicate that Thompson's requests were ever denied. The denial is the factual basis for the allegation that the County violated the Act. Since I cannot find that the denial occurred, I cannot find that the County violated the Act. Thus the County did not violate section 10(a)(1) by denying Thompson's FMLA request.

As with the denial, I find that the record lacks sufficient evidence to support Thompson's allegation that the County refused to allow her to apply for FMLA leave. The Complaint states, "[i]n or about June 2009, Moswin refused to allow Thompson to apply for leave under the provisions of the FMLA." Moswin required all staff members to attend the team building sessions. He did not allow Program staff to take vacation, holiday or "any other sort of time off" on the days of the team building sessions. This blanket requirement could create an inference that Thompson was not allowed to request time off under the FMLA provision, except Thompson does not argue this, and the evidence demonstrates Moswin specifically directed Thompson to take time off under the FMLA. On June 8, 2009, Moswin informed Thompson that if she was not going to participate in [the] team building sessions, that [she should] take those days as FMLA days." Therefore, since the record reflects the exact opposite of the factual allegation in the complaint, the Charging Party has failed to demonstrate that she was prevented from applying for leave under the FMLA. Thus, the County did not violate section 10(a)(1) by refusing to allow Thompson to apply for leave under the FMLA.

3. Untimely Performance Review

The County violated Section 10(a)(1) of the Act when it refused to evaluate Thompson in a timely fashion because of her union activity.

As above, the threshold issue is whether Thompson's untimely performance evaluation is an adverse action. An adverse employment action has a negative "effect on the employee's terms and conditions of employment." Chicago Park Dist. (Grant Park Music Festival), 26 PERI ¶ 76. In this case, the Complaint alleges that Moswin's and Wilson's failure to evaluate Thompson in a timely manner "plac[ed] her job in jeopardy." While conduct that places a person's job in jeopardy does constitute an adverse action because it directly affects the employee's work and welfare, there is no evidence that an untimely performance review jeopardized Thompson's job. However, the record does demonstrate that Thompson could not receive her contractually mandated annual pay increase without the County completing the performance evaluation. Thompson's untimely performance review directly affected when she received her annual pay increase. The CBA provides, "[a]ll bargaining unit employees shall receive . . . . [salary] increases *on* their anniversary date." Thompson's anniversary date was June 18. Thompson did not receive her pay increase until July 15, 2009. The evaluation became untimely on June 18, 2009, when it prevented Thompson from receiving her annual increase. Since Thompson had not received her pay increase on her anniversary date, Thompson suffered an adverse employment action.[19]

Here, Thompson establishes her *prima facie* case. Thompson engaged in protected activity when she negotiated a wage increase and filed the unclean workspace grievance, the County was aware of her activities, and Thompson's union activity was a substantial and motivating factor in the County's failure to conduct Thompson's performance review in a timely manner.

[19] Moswin testified that after Thompson filed the grievance, he informed her that the 3% increase was retroactive. Moswin's e-mail to Thompson is in the record, but there is no retroactive provision in the CBA, and the County does not argue nor cite any authority that this is not an adverse action.

Since I have found that Thompson engaged in union activity and the County was aware of that activity, the third prong requires analysis of the County's motive particular to this instance. Wilson was responsible for completing Thompson's performance review. In order to establish a discriminatory motive, Wilson's union animus must be a substantial or motivating factor in the reason the review was late. See Pace, 406 Ill. App. 3d at 495, citing Speed Dist. 802, 392 Ill. App. 3d at 636. It is evident from the record that Wilson expressed hostility toward the Union. Wofford-Green testified that after a previous employee had sought Union assistance, Wilson refused to handle employees' grievances with the Union. When Thompson requested a copy of her performance review Wilson offered no explanation as to why she had not completed the review, when she planned to complete the review, or even whether she planned to complete the review. When Hektoen asked Wilson about Thompson's review she said that she did not want to "get involved." The timing is suspicious because Thompson's performance review was due on her anniversary date and Wilson sent Merriweather regarding Thompson's alleged abuse of the FMLA leave a few weeks prior. Thompson's exercise of the CBA provisions on FMLA leave is protected activity because invoking a contractual right is a direct extension of the collective bargaining process. See Speed Dist. 802, 392 Ill. App. 3d at 643.

The County argues that there was not a pattern of disparate treatment of those engaging in union activity because Moswin was late completing other employees' performance reviews. I agree that there is no evidence of disparate treatment here, but it is not because Moswin was late in completing other employees' reviews. There is no evidence of disparate treatment because Wilson was originally supposed to complete Thompson's review, and the Charging Party has not demonstrated the Wilson was only late completing Thompson's review, and not those of other employees. The record demonstrates that Wilson asked Moswin to complete Thompson's

review shortly before Wilson left for vacation. At this point Thompson's review was already past due. Moswin's explanation does not address the reason for the late review, it only addresses his reason for it continuing to be late after he was asked to complete the review.

I find the County's argument that Moswin was supposed to complete Thompson's review all along to be a shifting explanation and inconsistent with the evidence. In her written response to Thompson's grievance, Wilson stated, she and Moswin agreed that he would complete the review. On June 25, 2009, Moswin informed Thompson that he was going to complete Thompson's review because Wilson was on vacation and that he needed to complete other employee's performance evaluations that were even more overdue. Wilson's vacation began on June 25, 2009, after Thompson's review was already past due. Moswin's reasons relate to why the review continued to be late, not why Wilson initially failed to complete the review. This demonstrates that only after Wilson did not review Thompson did Moswin take any action.

Wilson's obvious dislike for the Union, Wilson's hostile responses to requests for Thompson's review, and the County's shifting explanations for the lateness of the review provide sufficient circumstantial evidence to support a finding that Thompson's union activities were a substantial motivating factor in Wilson's reason for not completing the performance review.

The County is now burdened to prove beyond a preponderance of the evidence that it relied upon a legitimate business reason for not conducting Thompson's performance review in a timely manner. The County does not meet its burden because it did not provide a reason for Thompson's late performance review. As stated above, the explanation that Moswin was going to complete Thompson's review only relates to why the review continued to be late, not why

Wilson initially failed to complete the review. Any reference to the other late evaluations does not relate to the reason for Thompson's late evaluation.

Since, Thompson has established her *prima facie* case, and the County failed to proffer any reason for its failure to complete her timely evaluation, Thompson has established by a preponderance of the evidence that the County violated Section 10(a)(1) of the Act.

4. Negative Performance Review

The County did not violate Section 10(a)(1) of the Act when it evaluated Thompson with an overall ranking markedly lower than her previous evaluation because the evaluation was not an adverse employment action, nor did it reasonably tend to interfere with, restrain, or coerce Thompson in her exercise of rights protected under the Act.

Thompson's markedly lower performance evaluation was not an adverse employment action because the evaluation did not affect her terms and conditions of employment. An employment evaluation that is lower than a previous evaluation is not necessarily an adverse employment action. See Chicago Park Dist., 8 PERI ¶ 3011 (IL LLRB 1992) (a marginally lower performance evaluation does not constitute an adverse employment action). In order for the negative performance evaluation to be sufficiently adverse under the law, it must have a negative effect on Thompson's terms and conditions of employment.[20] In interpreting the Illinois Educational Labor Relations Act, the Illinois Educational Labor Relations Board upheld an ALJ's finding that a reduced performance evaluation was not an adverse action because there

[20] But see City of Markham, 25 PERI ¶ 117 (IL LRB-SP ALJ 2009). In a non-precedential decision, the ALJ found that the respondent violated the Act when it issued an employee an unsatisfactory evaluation, even though it did not affect the employee's terms and conditions of employment because the evaluation was only used as a tool to help employees improve their performance. The employer conceded that the unsatisfactory performance evaluation was an adverse action, so the ALJ went directly into the City of Burbank analysis. Here, the County has not conceded that the performance evaluation was an adverse action.

was no evidence that the performance evaluation adversely affected the employee's title, salary, benefits, or other working conditions. N. Ill. Univ., 23 PERI ¶ 160 (IELRB ALJ 2007).

In this case, Thompson's evaluation went from a total score of 23.25 in 2008, to a total score of 13.05 in 2009. While this is a significantly lower rating, there is no evidence that this rating affected her terms and conditions of employment. The performance review form states that its purpose "is to clarify employee job responsibilities and performance standards and provide direction for employee development and/or performance improvement." Thompson received her contractual 3% annual raise, and there is no evidence that a performance review is the basis for additional compensation. There is no evidence that a negative performance review is a disciplinary act, or that it could affect Thompson's title, salary, benefits or other terms and conditions of employment.

However, the negative performance review could still be found to violate Section 10(a)(1) if the review reasonably tended to interfere with, restrain or coerce employees in the exercise of their rights protected by the Act. Cook and Cook Cnty. Sheriff, 28 PERI ¶ 155 (IL LRB-LP 2012). A violation of Section 10(a)(1) of the Act does not require that the employees were actually coerced or that the employer intended to coerce the employees. Id.; Vill. of Ford Heights, 26 PERI ¶ 2017 (IL LRB-SP 2010); Vill. of Elk Grove, 10 PERI ¶ 2001 (IL SLRB 1993). An alleged violation of Section 10(a)(1) is analyzed from the objective viewpoint of an employee, because the Act is "concerned with the effect of an employer's actions on the free exercise of employee rights regardless of the employer's purpose." City of Mattoon, 11 PERI ¶ 2016 (IL SLRB 1995). Section 10(c) of the Act provides that an employer's expression of its "views, argument, or opinion" does not violate Section 10(a) "unless a reasonable employee would view the statements as conveying a promise of benefit or threat of reprisal or force."

Champaign-Urbana (Public Health Dist.), 24 PERI ¶ 122 (IL LRB-SP 2008); City of Mattoon, 11 PERI ¶ 2016 (IL SLRB 1995).

A threat does not need to be direct; indirect or implied threats have been found unlawful. Vill. of Calumet Pk., 22 PERI ¶ 23 (IL LRB-SP 2006); State of Ill., Dep't of Cent. Mgmt. Servs. (Corrections), 16 PERI ¶ 2019 (IL SLRB ALJ 2000), citing NLRB v. Gissel Packing Co., 395 U.S. 575 (1969). Thus, the issue here is whether a reasonable employee in Thompson's circumstances would view Moswin's rating or the comments in her performance review as conveying a promise of benefit or threat of reprisal or force.

The basis of Thompson's lower rating was explained in Moswin's comments in the performance review. Moswin's comments in the review regarding Thompson's grievances do not violate Section 10(a)(1) of the Act, because the comments do not contain a threat of a reprisal. The County argues that Moswin's review of Thompson is an accurate depiction of her inability to listen, acknowledge her own mistakes, and her own role in the problems around the office, but does not address Moswin's comment that Thompson "filed grievances with the union for issues where better communications, and/or more patience, would accomplish more." Moswin wrote this comment under the "Communications Skills" section where Thompson was given a rating of 1. As stated, the performance review is used to clarify performance standards and provide direction for employee development and improvement. From an objective position, Moswin's comments imply that Thompson's performance would improve if she did not file grievances, and that her union activity is negatively affecting her ability to meet his expectations. However, this comment does not violate the Act, because it does not contain a promise of a benefit if Thompson stops filing grievances, nor do they contain explicit or implied threats of reprisal if Thompson continues to file grievances.

Thompson argues that Moswin's comment that she "should be more of a team player and move past grievances" was a veiled threat and that unless she ceased contacting or seeking support of the Union that she would be subject to disciplinary action. Moswin testified that this comment refers to his belief that Thompson was carrying a grudge over previously resolved grievances. I find Moswin's explanation plausible because in context it relates to Moswin's request that Thompson mend her relationship with Wilson. Therefore, the County did not violate Section 10(a)(1) of the Act when it issued Thompson a markedly lower performance evaluation.

5. Termination

The County violated Section 10(a)(1) of the Act when it terminated Thompson's employment because it took such action as a result of Thompson's union activity.

Here, Thompson established her *prima facie* case that the County terminated her because of its union animus. The first prong is satisfied because Thompson filed grievances and enlisted the Union's assistance in negotiating a salary adjustment, which are protected union activities. The second prong is satisfied because the County was aware of that activity because the County had meetings with the Union regarding Thompson's grievances and her salary adjustment. The third prong is satisfied by direct evidence of the County's animus, and by circumstantial evidence that the animus was a substantial or motivating factor its decision to terminate Thompson.

The County's animosity towards Thompson's protected, concerted activity is well documented and vast. Animosity from Wilson and Moswin directed at Thompson began during the salary adjustment negotiations. Moswin and Wofford-Green opined that tension began because Wilson was angry over the raise. In Thompson's formal warning, Wilson stated that "[u]nion business during work hours is prohibited." Moswin testified that he was not aware of

any prohibition about calling the Union and that at no time did Thompson not get her work done because of the Union. In response to Thompson's grievance for not getting her performance review on time, Wilson responded, "this grievance represents harassment from this employee and this is not the first time and will no longer be tolerated." Wofford-Green testified that Wilson did not want to have anything to do with the Union after the incident with Thompson's predecessor. Also, Wilson filed a complaint against Steward Wofford-Green.

Moswin expresses his similar animosity over the grievance, "I consider your running to grievance when your eval is 4 days late to be harassment. I don't appreciate it when co-workers try to resort to intimidation (whether intentional or not)." Moswin made repeated statements regarding Thompson's union activity and called her "toxic" because "I'm sick and tired of her filing grievances," and referred to her filing grievances as "intimidation tactics and threats." While I have already determined that Thompson's performance review is not an independent violation of the Act, it is evidence of the County's anti-union animosity.

In regard to shifting explanations, when the County initially informed Thompson of her termination, the County stated that it was due to the layoff of non-clinical employees. When Moswin testified, he stated that it was due to the layoff of employees that were not "frontline" staff. The County contends that it terminated Thompson because the Program lost approximately $120,000 to $140,000 in annual grants, and it reorganized, and eliminated Thompson's position. The County is consistent in its explanation of the facts that led to Thompson's termination, but the specific reason for choosing her position for elimination has shifted. In December 2009, when Moswin and Wilson informed Thompson of her pending termination they stated they "would lay off the nonclinical service providers because they needed the clinical service providers more." The Program only consists of six clinical employees, four doctors and two

physician assistants. The remaining fourteen employees were all non-clinical. Later, Moswin testified that he chose to terminate non-frontline staff, and identified four employees that were within that category. This dramatically diminished the pool of employees that were chosen to be eliminated from fourteen to four.

The County also stated that it eliminated Thompson's position because she had little contact with patients, and because it could no longer afford the position. This argument is inconsistent with the facts presented in the record, and the County's subsequent actions. Thompson testified that in the year she was laid off she referred 143 patients to a case manager at the AIDS Foundation of Chicago. The Program serves 350 patients. Thus, Thompson had direct contact with nearly half of the patients in the Program. Thompson's performance evaluation also stated that the standard for her to effectively complete her job duties requires that she "[d]emonstrate good therapeutic relationships with clients." Second, Thompson's salary was being paid out of the Primary Care grant, which funding was not cut.[21] Third, less than six months after Thompson was terminated because the Program could "not afford [Thompson's] position," the Program hired a Program Assistant. With the exception of the dental program records, the Program Assistant conducts the same tasks that Thompson conducted while she was employed as a Senior Administrative Assistant. The Program Assistant shares an office with Papa, and reports directly to Wilson. The Program Assistant continues to work for the Program, though in recent years the Program has been operating on even less funds than it did when Thompson was terminated.

Finally, the County treated union and non-union employees differently. Of the four "non-frontline" employees Moswin identified for laying off, there is no evidence that any other

[21] While it is within the County's authority to create budgets for the Program, the CBA's grants provision required the County to take actions when such grants were eliminated. This provision suggests that positions were anticipated to be cut according to the grants which the positions are funded from.

employee besides Thompson engaged in union activity. Carr was not a member of the Union, and Papa was the subject of Thompson's unsanitary workplace grievance. Here, Thompson presented sufficient evidence to infer unlawful motivation.

Since Thompson established her *prima facie* case, the burden shifts to the County to demonstrate that it relied on a legitimate business reason for terminating Thompson's employment, and that she would have received the same treatment if she had not filed grievances or enlisted the Union's assistance in obtaining a salary adjustment. See City of Burbank, 128 Ill. 2d 335 at 347. The County asserts that it terminated Thompson because the Program lost grant funds and she had little direct client contact. There is no dispute that the Program lost funds, but I find that the County did not actually rely on this reason when it terminated Thompson. Moswin testified that the Program is currently running on less money than it had in 2009, yet it hired a replacement for Thompson in 2010. This employee is being paid by grant funds, which are lower than they were in 2009. Therefore, the County's proffered reason for Thompson's termination is not legitimate because the County did not actually rely on the loss of funds to phase out the administrative assistant position. Having determined that the County did not actually rely on the loss of funding, the County's reason is pretextual and the inquiry is complete. See Id.

Therefore, the County violated section 10(a)(1) of the act when it terminated Thompson's employment because of her union activity.

C. NLRB Settlement

Section 11(c) of the Act states that if a respondent is found to have engaged in an unfair labor practice, then the Board shall issue an "order requiring [the employer] to cease and desist from the unfair labor practice, and to take such affirmative action, including reinstatement of

public employees with or without back pay, as will effectuate the policies of this Act . . . The Board's order may further require the [employer] to make reports from time to time, and demonstrate the extent to which [it] has complied with the order." The Illinois Appellate Court has found that "this statutory grant of power, at a minimum, permits the Board to fashion a remedy that will make the charging party whole." See Sheriff of Jackson Cnty. v. Ill. State Labor Rel. Bd, 302 Ill. App. 3d 411, 415-416 (5th Dist. 2007) citing Sure-Tan, Inc. v. Nat'l Labor Rel. Bd, 467 U.S. 883, 901 (1984).

The County argues that all of the remedies available to Thompson have been realized or waived due to the settlement of the NLRA charge, which required Hektoen to post a notice of the settlement agreement, included a make whole monetary award, and stated that Thompson waived reinstatement at Hektoen. Thompson argues that the settlement between her and Hektoen does not prevent Thompson from proceeding against the County, because under the Memorandum between the County and Hektoen, the County could be held liable for the money Hektoen paid to Thompson, Thompson's receipt of the monetary award does not stop the accumulation of back pay, and the settlement only prevents Thompson from being hired by Hektoen, not the County. The settlement states that it does not "constitute a settlement of any other cases or matters, including any charges or allegations by Rhodda Thompson against Provident Hospital of Cook County. . . . Thompson may proceed with her charge against Provident Hospital of Cook County currently pending at the Illinois Labor Relations Board." The County is not a party to the settlement between Hektoen and Thompson. Here, Hektoen is not a party.

Thompson alleges, and I have found, the County has violated the Act by committing unfair labor practices. In unfair labor practice cases, "the standard remedy is a make-whole order and to restore the status quo ante, that is, to place the parties in the same position they

would have been in had the unfair labor practice not been committed." Vill. of Ford Heights, 26 PERI ¶ 145 (IL LRB-SP 2010); See e.g. Vill. of Dolton, 17 PERI ¶ 2017 (IL SLRB 2001); Vill. of Hartford, 4 PERI ¶ 2047 (IL SLRB 1988); Vill. of Glendale Heights, 1 PERI ¶ 2019 (IL SLRB 1985), aff'd by unpub. order, 3 PERI ¶ 4016 (1987).

Thompson's settlement with Hektoen is just that, a settlement over Hektoen's alleged wrongdoing, the settlement does not prevent Thompson from proceeding with her allegations that the County's actions violated the Act. The fact that Hektoen was require to post a notice of the settlement agreement, pursuant to the NLRA, does not address whether the County should still be required to post a notice pursuant to this Act. The settlement with Hektoen included a make whole monetary award. The monetary award was based on back pay that Thompson lost at the time she entered into the settlement agreement. Thompson's back pay has continued to accumulate, and should be calculated accordingly, adjusting for this previous settlement.

Thompson's waiver of reinstatement at Hektoen does not prevent her from being reinstated at the County. See First Transit/River Valley Metro, 26 PERI ¶ 38 (IL LRB-SP 2010). In addition, any potential difficulties that might arise can be addressed in a compliance proceeding. Id. Here, the County argues that it never employed Thompson, so it cannot be ordered to reinstate her, and she has waived her reinstatement with Hektoen. Since I have determined that Hektoen and the County jointly employed Thompson, and only the County is subject to this order, her waiver of reinstatement at Hektoen has no bearing to whether the County can reinstate Thompson directly. The NLRB settlement specifically stated that "nothing in this Agreement shall prevent Rhodda Thompson from seeking reinstatement directly from Provident Hospital of Cook County." Similarly, any difficulties the County may have in employing Thompson can be addressed through compliance proceedings.

Therefore, Thompson's settlement with Hektoen does not preclude her from receiving relief from the Board.

V. CONCLUSIONS OF LAW

Thompson was employed jointly by the County of Cook and the Hektoen Institute. The County did not violate Section 10(a)(1) of the Act when it issued Thompson a formal warning. The County did not violate Section 10(a)(1) of the Act when it denied Thompson's application for leave under provisions of the Family Medical Leave Act. The County did not violate Section 10(a)(1) of the Act when it refused to allow Thompson to apply for leave under provisions of the Family Medical Leave Act. The County violated Section 10(a)(1) of the Act when it failed and/or refused to evaluate Thompson in a timely fashion. The County did not violate Section 10(a)(1) of the Act when it gave Thompson a performance evaluation with an overall rating markedly lower than her previous evaluations. The County violated Section 10(a)(1) of the Act when it terminated Thompson's employment. Thompson's settlement with Hektoen does not prevent her from receiving relief under the Act.

VI. RECOMMENDED ORDER

In light of the above findings and conclusions, I recommend the following:

1. Cease and desist from:

(a) interfering with, restraining or coercing employees in the exercise of rights guaranteed under the Act by threatening employees with reprisals for engaging in activities related to the grievance procedure of the collective bargaining agreement between the employees within its control and the union.

(b) Refusing and/or failing to evaluate employees in a timely manner.

(c) Terminating employees because of their union activity.

2. That Respondent be ordered to immediately take the following affirmative step which would effectuate the policies of the Act:

(a) Reinstate Thompson to her previous position.

(b) Make Thompson whole by paying back pay from the date of her termination of January 10, 2010 to the date of her reinstatement.

(c) Post for 60 consecutive days, at all places where notices to the employees of the County of Cook are regularly posted, signed copies of the attached notice.

(d) That Respondent be ordered to notify the Board, in writing within 20 days of the date of the Board's Order, of the steps that the Respondent has taken to comply herewith.

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 (7) 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, IL 60601-3103, and 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 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 October, 2013.

STATE OF ILLINOIS
ILLINIOIS LABOR RELATIONS BOARD
LOCAL PANEL

Michelle N. Owen
Administrative Law Judge

NOTICE TO EMPLOYEES

FROM THE
ILLINOIS LABOR RELATIONS BOARD

The Illinois Labor Relations Board has found that the County of Cook 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 gives you, as an employee, these rights:

To engage in protected, concerted activity.
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 or protection.
And, if you wish, not to do any of these things.

Accordingly, we assure you that:

WE WILL NOT interfere with, restrain or coerce employees in the exercise of rights guaranteed under the Act by threatening employees with reprisals for engaging in activities related to the grievance procedure of the collective bargaining agreement between the employees within its control and the union.

WE WILL NOT refuse or fail to evaluate employees in a timely manner nor terminate them because of their union activity.

WE WILL reinstate Rhodda Thompson to her previous position.

WE WILL make Rhodda Thompson whole by paying back pay from the date of her termination of January 10, 2010 to the date of her reinstatement.

WE WILL preserve, and upon request, make available to the Board or its agents for examination and copying, all records, reports and other documents necessary to analyze the amount of relief due under the terms of this decision.

This notice shall remain posted for 60 consecutive days at all places where notices to employees are regularly posted.

_____	_____
Date of Posting	County of Cook (Employer)

ILLINOIS LABOR RELATIONS BOARD

One Natural Resources Way, 1st Floor
Springfield, Illinois 62702-1271
(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.