

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

Chris Logan,	)	
	)	
Charging Party	)	
	)	Case No. L-CA-12-041
and	)	
	)	
City of Chicago,	)	
	)	
Respondent	)	

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

On August 8, 2014, Administrative Law Judge (ALJ) Michelle Owen issued a Recommended Decision and Order resolving a charge filed by Chris Logan (Charging Party) alleging that Respondent, City of Chicago, violated Section 10(a)(1) the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2012), as amended, by denying his Weingarten rights when it refused to allow a union representative to be present during a September 13, 2011 pre-disciplinary meeting. The ALJ found that Respondent did not violate Section 10(a)(1) of the Act when it held the September 13, 2011 pre-disciplinary meeting, and recommended that the charge be dismissed. However, based upon the evidence presented at the hearing, the ALJ found that Respondent violated Section 10(a)(3) and (1) of the Act when it issued the Charging Party notice of a second pre-disciplinary meeting, (2012 Notice) in retaliation for bringing the instant charge before the Board.

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 did not file a response. After reviewing the record and exceptions, we reverse the Administrative Law Judge's recommended findings that Respondent City of Chicago violated Section 10(a)(3) and (1) of the Act.<sup>1</sup>

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<sup>1</sup> We leave undisturbed the ALJ's factual and legal conclusions regarding the alleged violation of the Act which she recommended be dismissed. Neither party filed exceptions to the ALJ's determination regarding that allegation, thus her recommendations stand as non-precedential findings of the ALJ, binding only on the parties.

The Respondent's exceptions all relate to the ALJ's legal conclusion that the Respondent violated Section 10(a)(3) and (1) of the Act when it issued the Charging Party the 2012 Notice for serving a subpoena upon his supervisor Aviation Security Sergeant Yvette Yanez, but does not dispute any factual findings on this issue.

As a preliminary matter, we reject Respondent's exception that the charge before us is moot because the Respondent ultimately chose not to proceed with discipline. The alleged unfair labor practice is the issuance of the 2012 Notice, not any discipline that may have followed. As such, the fact that Respondent chose not to issue discipline, or even proceed to the scheduled meeting, does not relieve the Board of its responsibility to determine whether the issuance of the 2012 Notice itself violated the Act. We also agree with the ALJ that if she did find that this action violated the Act, a cease and desist order would be an appropriate remedy.

As stated above, the facts as determined by the ALJ are not in question, but Respondent does argue that the facts in the record are legally insufficient to support finding a violation of the Act. While we ultimately agree that the 2012 Notice is insufficient to find a violation of Section 10(a)(3) and (1) of the Act, we reject Respondent's argument that this is because the Charging Party did not establish that Respondent issued the 2012 Notice. The 2012 Notice is on Respondent's letterhead, and the Charging Party testified to receiving the 2012 Notice as part of a pre-disciplinary packet. Without contrary evidence, the logical inference is that Respondent issued the 2012 Notice.

However, we find that the issuance of the 2012 Notice is insufficient to sustain the alleged charges because the issuance of the 2012 Notice is not an adverse action under the Act. Section 10(a)(3) of the Act prohibits an employer or its agents from discharging or otherwise discriminating against an employee because an employee has signed or filed an affidavit, petition or charge or provided any information or testimony in furtherance of its rights guaranteed under the Act. City of Chicago v. Ill. Local Labor Rel. Bd., 182 Ill. App. 3d 588, 594 (1st Dist. 1988); Vill. of Lisle, 24 PERI ¶ 53 (IL LRB-SP 2008), citing Sheriff of Cook Cnty., 6 PERI ¶ 3019 (IL LLRB 1990). To establish a prima facie case for a Section 10(a)(3) and (1) violation, the charging party must show, by a preponderance of the evidence, that 1) the employee engaged in the particular protected activity described in Section 10(a)(3) of the Act; 2) the employer was aware of the employee's protected activity; 3) the employer took an adverse employment action against the employee; and 4) the employer's action was motivated, in whole or in part, by the

employer's animus toward the employee's protected activity. Cook Cnty. v. Ill. Labor Rel. Bd., 2012 IL App (1st) 111514 ¶ 25, citing City of Burbank v. Ill. State Labor Rel. Bd., 128 Ill. 2d 335, 346 (1989); Pace Suburban Bus Div. of Reg'l Transp. Auth. v. Ill. Labor Rel. Bd., 406 Ill. App. 3d 484, 495 (1st Dist. 2010); Vill. of Lisle, 24 PERI ¶ 53 (IL LRB-SP 2008).

While an action does not need to have an adverse tangible result or adverse financial consequence to be considered an adverse employment action under the Act, there must be some qualitative change in or actual harm to an employee's terms or conditions of employment. City of Chicago v. Ill. Local Labor Rel. Bd., 182 Ill. App. 3d at 594-95. 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); see Cnty. of DuPage and DuPage Cnty. Sheriff, 30 PERI ¶ 115 (IL LRB-SP 2013) (employer's transfer of an employee from an elite unit constituted an adverse action because the employee would no longer earn overtime or compensation time when training on his regular day off and because he experienced a significant loss of responsibility associated with the loss of prestige); Chicago Transit Auth., 19 PERI ¶ 34 (IL ILRB-LP 2003) (a verbal warning that was recorded in the employee's personnel file constituted an adverse action); but see Cnty. of Cook/Hektoen Inst., 30 PERI ¶ 252 (IL LRB-LP 2013) (finding that the employer's failure to complete a timely performance evaluation that resulted in a delay of the employee's annual pay increase was not an adverse employment action because the pay increase was retroactive from the date of her anniversary, not from the date of the evaluation).

Though not included in the ALJ's findings, a review of the record demonstrates that the 2012 Notice contains the following statement: "the pre-disciplinary meeting is a fact finding meeting and is [the employee's] opportunity to defend or explain [his] actions, or the incident. [The employee's] response or lack of response to questions asked regarding the allegations will determine if [he is] in violation of the rule(s)." Here, the alleged adverse action is not the discipline itself, but rather the initiation of disciplinary proceedings which *could* result in discipline. In other words, the 2012 Notice was at most the threat of discipline. See Chicago Board of Education, 30 PERI ¶ 152, (IL IELRB ALJ 2013)(an ALJ from the Illinois Educational Labor Relations Board (IELRB) finding that the issuance of a pre-disciplinary meeting notice

was not an adverse employment action, but did constitute interference with the rights protected under the Illinois Educational Labor Relations Act (IELRA)). Thus, we find that the adverse action in question does not satisfy the third element of the prima facie case because there was no actual harm to the Charging Party's terms and conditions of employment.

We further note that the Complaint alleges a violation of Section 10(a)(3) and derivatively, 10(a)(1) and does not charge an independent violation of Section 10(a)(1) of the Act. This is an important distinction. Section 10(a)(1) of the Act prohibits an employer or its agents from interfering with, restraining, or coercing employees in the exercise of their rights guaranteed under the Act. Where, as here, alleged violations of Sections 10(a)(1) and 10(a)(3) stem from the same conduct, the 10(a)(1) violation is considered to be derivative, i.e. a result of the 10(a)(3) violation. State of Ill. Dep't of Cent. Mgmt. Serv. (Dep't of Public Aid), 10 PERI ¶ 2006 (IL ISLRB 1993); see also Bloom Twnshp. High Schl. Dist. 206, Cook Cnty. v. Ill. Ed. Labor Rel. Bd., 312 Ill. App. 3d 943, 957 (1st Dist. 2000) (using the same analysis in interpreting very similar provisions of the IELRA). In such cases, the test to be applied is the one used to determine whether the primary violation occurred. Bloom Twnshp. High Schl. Dist. 206, Cook Cnty. v. Ill. Ed. Labor Rel. Bd., 312 Ill. App. 3d at 957. This is because when a 10(a)(1) violation is alleged only as a result of a Section 10(a)(3) violation, a 10(a)(1) violation can only be found if the underlying 10(a)(3) charge is sustained. State of Ill. Dep't of Cent. Mgmt. Serv. (Dep't of Public Aid), 10 PERI ¶ 2006 (IL ISLRB 1993). Because it is not an allegation of the Complaint, whether the issuance of the 2012 Notice constituted a threat that would reasonably tend to restrain an employee in the exercise of his rights under the Act, so as to constitute an independent violation of Section 10(a)(1) is not properly before us and we decline to address the issue on our own accord. See Chicago Transit Auth. v. Ill. Labor Rel. Bd., 386 Ill. App. 3d 556, 571-575 (1st Dist. 2008); Cnty. of Cook (Dep't of Central Serv.), 15 PERI ¶ 3008 (IL LRB 1999) (finding that because the charging party first alleged an independent 10(a)(1) violation in its exceptions and the Complaint only alleged a 10(a)(1) derivative of the 10(a)(2) allegation in the Complaint, the independent violation was not a proper issue before the Board).

Finding that the Charging Party has failed to satisfy the third prong of his prima facie case, we find it unnecessary to address the ALJ's analysis of the remaining elements of the 10(a)(3) and derivative 10(a)(1) allegations. Accordingly, the instant Complaint is dismissed.

BY THE ILLINOIS LABOR RELATIONS BOARD, LOCAL PANEL

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

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

Chairman Gierut, Dissenting:

I respectfully dissent from the opinion of my colleagues, and would have found a violation of the Act under the circumstances presented. I believe the clear and intended chilling effect of the disciplinary notice constitutes sufficient adverse employment action under Section 10(a)(3) and, derivatively, 10(a)(1) of the Act. The Charging Party was issued a pre-disciplinary notice for actions directly related to his protected activity under Act. The fact that a pro se charging party may not have known the technical aspects of the Act should not hinder his efforts to exercise those rights guaranteed under the Act.

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

Decision made at the Local Panel's public meeting in Chicago, Illinois on November 18, 2014;  
written decision issued in Chicago, Illinois on January 16, 2015.

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

Chris Logan,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. L-CA-12-041
	)	
City of Chicago,	)	
Department of Aviation,	)	
	)	
Respondent	)	

**ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER**

On February 22, 2012, Chris Logan (Charging Party or Logan) filed a charge with the Local Panel of the Illinois Labor Relations Board (Board) in Case No. L-CA-12-041 alleging that the City of Chicago, Department of Aviation (Respondent or City) 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 June 18, 2012, the Board’s Executive Director issued a Complaint for Hearing. A hearing was held on September 17, 2012, in Chicago, Illinois by the undersigned. All parties appeared at the hearing and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally. Written briefs were timely filed by all parties. After full consideration of the parties’ stipulations, evidence, arguments, and briefs, and upon the entire record of the case, I recommend the following.

**I. PRELIMINARY FINDINGS**

1. At all times material, the Respondent has been a public employer within the meaning of Section 3(o) of the Act and the Board has jurisdiction over this matter pursuant to Section 5 of the Act.

2. At all times material, the Respondent has employed Charging Party as an Aviation Security Officer.
3. At all times material, the Charging Party has been a public employee within the meaning of Section 3(n) of the Act.
4. At all times material, the Charging Party has been included in a historical bargaining unit known as Unit II, and included in a group administered by the Service Employees International Union, Local 73 (SEIU).
5. On or about September 13, 2011, the Respondent required the Charging Party to attend a pre-disciplinary conference concerning his conduct on August 17, 2011.

## **II. ISSUES AND CONTENTIONS**

The first issue is whether the City violated Section 10(a)(1) of the Act by violating the Charging Party's right to union representation at a pre-disciplinary meeting. The Charging Party contends that he requested union representation and the City continued the meeting without permitting him the requested union representation. The City argues that the Charging Party was informed of his right to have a union representative present. In addition, the City asserts that the Charging Party declined union representation and requested that the meeting proceed.

The second issue is whether the City violated Sections 10(a)(3) and (1) of the Act by issuing the Charging Party a notice for a pre-disciplinary meeting after he served a Board issued subpoena on a witness to the hearing in this case. The City argues that since it decided to not proceed with the discipline process prior to the commencement of the hearing, the matter is now moot.<sup>1</sup>

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<sup>1</sup> The City also argues that this allegation was asserted for the first time at hearing and thus constituted prejudice and unfair surprise. In addition, the City argues that this allegation is outside the scope of the complaint and should be dismissed. However, prior to the hearing, on August 3, 2012, I informed Logan

### **III. FACTS**

Logan has been employed as an Aviation Security Officer with the City since 1992. Logan has acted as an SEIU union steward or representative for the past 13 years. He has been on the bargaining committee for the last three collective bargaining agreements between the City and SEIU.

On or about September 1, 2011, the City provided Logan with a notice of a pre-disciplinary meeting to be held on September 13, 2011. The notice concerned allegations that Logan had been insubordinate by refusing to follow a direct order from his supervisor, Aviation Security Sergeant Yvette Yanez on August 17, 2011 in violation of subsections 25 (Insubordinate actions) and 48 (Violating any departmental regulations, rules, or procedures) of the City's personnel rules. The notice included the following statement: "Information obtained at this meeting may result in discipline. [I]f you want union representation at this meeting it is your responsibility to contact your union steward/representative to inform them of the meeting date and time."

On September 13, 2011, Logan brought friend and co-worker Aviation Security Officer Jesse Gray to act as his witness at the pre-disciplinary meeting. Gray was not a union representative or union steward at this time. Present at the meeting on behalf of the City were Labor Relations Supervisor Argentene Hrysikos, City Labor Relations Specialist Dawna Harrison, Aviation Sergeant Jorge Rodriguez, Jr., and Aviation Sergeant Kevin Zator. There is conflicting testimony as to what was said at this meeting.

When Logan and Gray arrived to the meeting, Hrysikos stated that Gray could not stay in the meeting because he was not a union representative. Hrysikos also stated that Gray needed to

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and the City that Logan would be allowed to present evidence of this allegation pursuant to Section 1220.50(f) of the Board's Rules. Thus, the City's argument is without merit.

get back to his assignment because he was presently on duty. Logan responded that Gray was acting as Logan's witness. Hrysikos told Logan that witnesses are not allowed at pre-disciplinary meetings, only union representatives. Logan asked Hrysikos why Gray was not allowed to stay since Gray had been allowed to accompany Logan to a previous pre-disciplinary meeting on August 16, 2011.<sup>2</sup> Hrysikos stated that only union representatives were allowed. Logan then asked Hrysikos to show him where this was stated in the collective bargaining agreement. The conversation became "heated" and voices were raised. Gray reports that everyone was talking over everyone else during the meeting and therefore it was difficult to hear what each person was saying. Hrysikos and Zator testified that they were able to hear Logan clearly despite the volume of the discussions.

Rodriguez then left the meeting room to obtain a copy of the collective bargaining agreement and the City's personnel rules. The meeting attendees read through the personnel rules and the collective bargaining agreement for about 30 minutes. The collective bargaining agreement in effect at the time stated: "At any meeting between the Employer and an employee in which the employee may be disciplined, including disciplinary investigations, where discipline is to be discussed, a Union representative may be present if the employee so requests." Logan told Hrysikos that there was nothing in the collective bargaining agreement that prohibited witnesses from being present at pre-disciplinary meetings. Hrysikos agreed, but said that Gray was not allowed to stay because Logan was allowed a union representative not a witness of his own choosing. At some point during the argument over whether Gray was allowed to stay in the meeting, Logan stated he wanted to appoint Gray as a union representative.

Logan and Gray testified that before Gray left the meeting room, Logan stated that he wanted a continuance to secure union representation. Gray testified that he did not hear Logan

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<sup>2</sup> Harrison confirmed that Gray had been allowed to attend the August 16, 2011 pre-disciplinary hearing.

waive his right to union representation. Gray then left the meeting room. Logan testified that after Gray left the room, Logan again stated that he wanted union representation. Logan testified that Hrysikos told Logan he could not leave the meeting.

Harrison, Hrysikos, Rodriguez, and Zator testified that Logan did not request union representation before or after Gray left the room. Harrison, Hrysikos, Rodriguez, and Zator testified that at no point did anyone tell Logan that he was not permitted to leave the meeting. Harrison, Hrysikos, Rodriguez, and Zator also testified that Hrysikos asked Logan more than once if he wanted to reschedule the meeting so that he could obtain union representation. Further, Harrison, Hrysikos, Rodriguez, and Zator testified that Logan stated that he wanted to continue the meeting. In addition, Harrison, Hrysikos, Rodriguez, and Zator testified that Logan never stated that he wanted to stop the meeting.

Logan then gave his written statement in response to the pre-disciplinary notice allegations. Hrysikos read Logan's written statement out loud. The City then played an audio tape recording stemming from the August 17, 2011 incident. Logan got up and walked out while it was being played saying that he would come back when the tape was done playing. When it was done playing, Logan returned to the meeting.

On January 19, 2012, Logan received a 15-day suspension notice for the August 17, 2011 incident. The suspension notice stated that Logan had violated subsections 08, 20, 23, 25, 29, 36, 39, 48, and 50 of the City's personnel rules. One of the violations was in response to Logan's refusal to participate at the pre-disciplinary meeting. On January 20, 2012, SEIU filed a grievance on Logan's behalf over the 15-day suspension. The grievance stated that the discipline was without just cause and untimely. The grievance has proceeded to arbitration.

On July 20, 2012, Logan requested that a subpoena be issued for the testimony of witness Sergeant Yanez. The Board issued a subpoena on July 20, 2012. On August 1, 2012, before Logan was scheduled for duty that day, Logan served Yanez with the subpoena. On August 9, 2012, Logan was issued a pre-disciplinary meeting notice for serving Yanez with the subpoena. The notice stated:

The following occurred on 1 August 2012 at 1320 hrs. Officer Logan served Sgt. Yanez with a subpoena after Deputy Commissioner Everett had given the Officer a direct order not to served [sic] any Officers or Supervisors a subpoena during there [sic] tour of duty at CDA.

Prior to the commencement of the Board hearing, the City chose not to proceed with the discipline process.

#### **IV. DISCUSSION AND ANALYSIS**

##### **A. Section 10(a)(1)**

The City did not violate Logan's right to union representation at the pre-disciplinary meeting.

The Act grants public employees the right to union representation during an investigatory interview if the employee reasonably believes the interview may result in discipline. Ill. Nurses Ass'n & State of Ill., Dep't of Cent. Mgmt. Servs., 16 PERI ¶ 2023 (IL SLRB 2000); Teamsters, Local 714 & City of Highland Park, 15 PERI ¶ 2004 (IL SLRB 1999); Hubbard & Vill. of Streamwood, 12 PERI ¶ 2021 (IL SLRB 1996); McClendon & City of Chi., 15 PERI ¶ 3012 (IL LLRB 1999); Int'l Bhd. of Elec. Workers, Local 134 & City of Chi., 13 PERI ¶ 3014; see also, NLRB v. Weingarten, 420 U.S. 251 (1975). The right to union representation, also known as Weingarten rights, arises only when (1) the meeting is investigatory; (2) the employee reasonably believes that disciplinary action may result; and (3) the employee requests a union representative. City of Chi. (Dep't of Buildings), 15 PERI ¶ 3012 (IL LLRP 1999); State

of Ill. Dep't of Cent. Mgmt. Servs. (Dept' of Corrections), 16 PERI ¶ 2023 (IL LRB-SP 2000); City of Highland Park, 15 PERI ¶ 2004.

The right of representation arises only when the employee requests union representation, and the right may be waived. Ill. State Toll Highway Auth., 25 PERI ¶ 76 (IL LRB-SP 2009); State of Ill., Dep't of Cent. Mgmt. Servs. (Public Aid), 20 PERI 81 (IL LRB-SP 2004); City of Chi. (Dep't of Aviation), 13 PERI 3014 (IL LLRB 1997); City of Chi. (Dep't of Police), 3 PERI ¶ 3021 (1987). The request for union representation does not have to be perfect; it need only put the employer on notice that the employee desires the assistance of a union representative. Ill. State Toll Highway Auth., 25 PERI ¶ 76, citing City of Highland Park, 15 PERI 2004; Nat'l Labor Relations Bd. v. Ill. Bell Telephone Co., 674 F.2d 618 (7th Cir. 1982); see Montgomery Ward & Co., 273 NLRB 1226 (1984) (employee who requested as his representative a person who was a supervisor and ineligible to act as an employee representative, put his employer on notice he desired representation). However, when an employee requests a representative who is unavailable, the employee has the obligation to request an alternative representative in order to invoke Weingarten protections. Montgomery Ward & Co., 273 NLRB 1226, citing Coca-Cola Bottling Co. of Los Angeles, 227 NLRB 1276 (1977).

Once an employee requests union representation at a meeting where Weingarten rights apply, an employer must (1) grant the request; (2) dispense with or discontinue the interview; (3) or offer the employee the choice of continuing the interview unaccompanied by a union representative or having no interview at all. City of Chi., 13 PERI ¶ 3014; State of Ill. Dep't of Cent. Mgmt. Servs. & Corrections, 1 PERI ¶ 2020 (IL SLRB 1985).

In this case, the City does not dispute that the meeting was investigatory or that Logan reasonably believed that disciplinary action may result. The City also knew that Logan wanted a

union representative at his pre-disciplinary meeting because Gray accompanied Logan to the meeting; Logan told the City representatives that Gray was present to represent Logan; and Logan sought to appoint Gray as a union representative. I conclude that Logan put the City on notice that he wanted to have a union representative present during the meeting.

However, the City did not violate Logan's right to union representation because the City offered Logan the choice of continuing the interview unaccompanied by a union representative or having no interview at all. I credit the City's witnesses' testimony that when the City asked Logan if he wanted to reschedule the meeting so that he could obtain union representation, Logan stated that he wanted to continue the meeting. Thus, Logan's right to union representation was not violated at the September 13, 2011 pre-disciplinary meeting because Logan waived his right to union representation.<sup>3</sup>

## **B. Subpoena**

### **1. Mootness**

Logan asserts that the City violated the Act when it issued him a pre-disciplinary notice for serving a subpoena on Yanez. The City claims that the matter is moot because the City chose not to proceed with the discipline prior to the commencement of the hearing.

A claim is moot when no actual controversy exists, where issues have ceased to exist, or where events occur which make it impossible for a court to grant effectual relief. Dep't of Cent.

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<sup>3</sup> Logan also argued at hearing and in his post-hearing brief that the City unlawfully increased the number of rule violations after the pre-disciplinary meeting because Logan asserted his right to union representation. Threatening an employee with discipline for exercising his Weingarten rights is a violation of the Act. City of Chi. (Dep't of Buildings), 15 PERI 3012. If an employer disciplines an employee for refusing to continue in the absence of representation the employer is, in effect, retaliating against the employee because he has engaged in protected, concerted activity, in violation of Section 10(a)(1). State of Il. Dep't of Cent. Mgmt. Servs. & Corrections, 1 PERI ¶ 2020. In this case, Logan was not engaged in protected, concerted activity at the pre-disciplinary meeting because he waived his right to have union representation. Since I have found that Logan waived his right to union representation at the meeting, there can be no finding that he was disciplined for asserting his right to have union representation.

Mgmt. Servs. & Bethel New Life, Inc., 9 PERI ¶ 2035 (IL SLRB 1993), citing Wheatley v. Bd. of Educ. of Twp. High Sch. Dist., 99 Ill. 2d 481 (1984); Dixon v. Chi. & Nw. Transp. Co., 151 Ill. 2d 108 (1992).

In this case, the matter is not moot because, even though the City did not proceed with discipline against Logan, a cease and desist order requiring the City to not in the future retaliate against employees for delivering subpoenas would be appropriate relief.

2. Sections 10(a)(3) and (1) violations

Section 10(a)(1) prohibits an employer or its agents from interfering with, restraining, or coercing employees in the exercise of their rights guaranteed under the Act. Section 10(a)(3) prohibits an employer or its agents from discharging or otherwise discriminating against an employee because the employee has signed or filed an affidavit, petition or charge, or provided any information or testimony in furtherance of the rights guaranteed under the Act.

To establish a violation of Section 10(a)(3), the charging party must show, by a preponderance of the evidence, that 1) the employee engaged in the particular protected activity described in Section 10(a)(3) of the Act, 2) the employer was aware of the employee's protected activity, 3) the employer took an adverse employment action against the employee, and 4) the employer's action was motivated, in whole or in part, by the employer's animus toward the employee's protected activity. Vill. of Lisle, 24 PERI ¶ 53 (IL LRB-SP 2008), citing Sheriff of Cook Cnty., 6 PERI ¶ 3019 (IL LLRB 1990); Cook Cnty. v. Ill. Labor Relations Bd., 2012 IL App (1st) 111514 ¶ 25, citing City of Burbank v. Ill. State Labor Relations Bd., 128 Ill. 2d 335, 346 (1989); Pace Suburban Bus Div. of Reg'l Transp. Auth. v. Ill. Labor Relations Bd., 406 Ill. App. 3d 484, 495 (1st Dist. 2010). An employer's animus can be demonstrated through expressions of hostility toward protected activity, together with knowledge of the employee's

protected activity; timing; disparate treatment or targeting of employees engaged in protected activity; inconsistencies between the reasons offered by the employer for the adverse action and other actions of the employer; and shifting explanations for the adverse action. City of Burbank, 128 Ill. 2d 335.

Here, Logan engaged in protected activity within the meaning of Section 10(a)(3) when he participated in the Board's processes by serving a subpoena on Yanez. There is no dispute that the City was aware of the protected activity. Further, Logan suffered an adverse employment action when he was issued notice of a pre-disciplinary meeting for serving the subpoena. In addition, there is sufficient evidence to demonstrate that the City's action was motivated in part by the employer's animus toward Logan's protected activity. There is direct evidence of unlawful motive because the pre-disciplinary notice expressly stated that Logan was receiving the notice because he had served the subpoena on Yanez. The timing of the adverse action is also suspicious because it occurred eight days after Logan engaged in the protected activity. Thus, the evidence shows that the City issued the discipline in part because Logan engaged in protected activity.

Once the charging party establishes its prima facie case, an employer can avoid a finding that it violated the Act by demonstrating that it would have taken the adverse action for a legitimate business reason regardless of the employer's animus. City of Burbank, 128 Ill. 2d 335. If legitimate reasons for the adverse employment actions are advanced, and are found to have been relied upon at least in part, then the case is characterized as "dual motive", and the employer must establish, by a preponderance of the evidence, that the action would have been taken notwithstanding the employee's protected activity. Id.

In this case, the City relied in part on a legitimate reason for the pre-disciplinary notice, that Logan violated a direct order to not serve any supervisors or officers a subpoena during the supervisors' or officers' tour of duty. However, the City has failed to meet its burden that it would have issued a pre-disciplinary notice to Logan if he had not served the subpoena. Again, the pre-disciplinary notice expressly stated that the notice was issued because Logan served a subpoena on his supervisor. Thus, the City has failed to show that it would have issued Logan a pre-disciplinary notice if he had not served the subpoena on his supervisor. Thus, the City violated Sections 10(a)(3) and (1) when it issued a pre-disciplinary notice to Logan for serving a subpoena.

#### **V. CONCLUSIONS OF LAW**

Respondent, City of Chicago, Department of Aviation, did not violate the Charging Party's right to union representation in violation of Section 10(a)(1) of the Act.

Respondent, City of Chicago, violated Section 10(a)(3) and (1) of the Act when it issued the Charging Party a pre-disciplinary notice for serving a subpoena.

#### **VI. RECOMMENDED ORDER**

IT IS HEREBY ORDERED that the Respondent, City of Chicago, Department of Aviation, its officers and agents shall:

1. Cease and desist from:
  - a. interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them under the Act, by disciplining them in retaliation for their exercise of such rights;
  - b. in any like or related manner, interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them under the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:
  - a. expunge from Respondent's files and records any reference to the pre-disciplinary notice issued to Chris Logan for serving a subpoena and notify him in writing that this has been done and that evidence of the pre-disciplinary notice will not be used as a basis for future personnel actions against him;
  - b. post, for 90 consecutive days, at all times where notices to employees of the City of Chicago, Department of Aviation are regularly posted, signed copies of the attached notice. Respondent shall take reasonable steps to insure that the notices are not altered, defaced, or covered by any other material.
  - c. Notify the Board, in writing, within 20 days of the date of this order, of the steps that Respondent City of Chicago 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 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 General Counsel of the Illinois Labor Relations Board at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. 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 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 on this 8th day of August, 2014.**

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



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**Michelle N. Owen  
Administrative Law Judge**

# NOTICE TO EMPLOYEES

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## FROM THE ILLINOIS LABOR RELATIONS BOARD

The Illinois Labor Relations Board, Local Panel, has found that the City of Chicago, Department of Aviation has violated the Illinois Public Labor Relations Act and has ordered us to post this Notice. We hereby notify you that the Illinois Public Labor Relations Act (Act) gives you, as an employee, these rights:

- To engage in self-organization.
- To form, join or assist unions.
- To bargain collectively through a representative of your own choosing.
- To act together with other employees to bargain collectively or for other mutual aid or protection.
- And, if you wish, not to do any of these things.

Accordingly, we assure you that:

**WE WILL** cease and desist from disciplining Chris Logan, or any employees, for serving Board issued subpoenas.

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

**WE WILL** expunge from all files and records any reference to the pre-disciplinary notice issued to Chris Logan for serving a subpoena and notify him in writing that this has been done and that evidence of the pre-disciplinary notice will not be used as a basis for future personnel actions against him.

**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 relief due under the terms of this decision.

This notice shall remain posted for 90 consecutive days at all places where notices to employees are regularly posted.

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Date of Posting

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City of Chicago, Department of Aviation  
(Employer)

## ILLINOIS LABOR RELATIONS BOARD

320 West Washington, Suite 500  
Springfield, Illinois 62701  
(217) 785-3155

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

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

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