

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

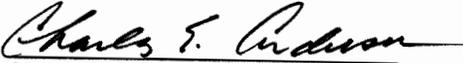
Brenda Carter,)	
)	
Charging Party)	
)	
and)	Case No. L-CA-13-008
)	
County of Cook Health and Hospital Systems)	
(Stroger Hospital),)	
)	
Respondent)	

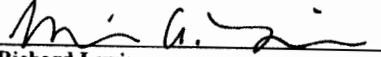
**DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL**

On December 21, 2012, the Illinois Labor Relations Board's Executive Director, Melissa Mlynski, dismissed the charge filed by Brenda Carter in the above-captioned case against the County of Cook Health and Hospitals System (Stroger Hospital) alleging it had engaged in unfair labor practices in violation of Section 10(a)(1) of the Illinois Public Labor Relations Act, 5 ILCS 315/10(a)(1) (2010). Pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200 through 1240, Carter filed a timely appeal of the dismissal. No response has been filed. For the reasons articulated by the Executive Director, we affirm the dismissal of the charge.

BY THE LOCAL PANEL OF THE ILLINOIS LABOR RELATIONS BOARD


Robert M. Gierut
Chairman


Charles E. Anderson
Board Member


Richard Lewis
Board Member

Decision made at the Local Panel's public meeting in Chicago, Illinois on February 7, 2013;
written decision issued in Chicago, Illinois on February 15, 2013.

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STATE OF ILLINOIS
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Brenda Carter,)	
)	
Charging Party)	
)	
and)	Case No. L-CA-13-008
)	
County of Cook, Health and Hospital)	
Systems (Stroger Hospital),)	
)	
Respondent)	

DISMISSAL

On July 26, 2012, Charging Party, Brenda Carter, filed an unfair labor practice charge with the Local Panel of the Illinois Labor Relations Board (Board) in the above-captioned case, alleging that Respondent, County of Cook, Health and Hospital Systems (County or Employer), violated Section 10(a) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2010), *as amended*. Following an investigation conducted pursuant to Section 11 of the Act, I determined that the charge fails to raise an issue of fact or law sufficient to warrant a hearing and hereby issue this Dismissal for the reasons set forth below.

I. INVESTIGATORY FACTS

Respondent is a public employer within the meaning of Section 3(o) of the Act. The American Federation of State, County, and Municipal Employees, Council 31 (AFSCME or Union), is a labor organization within the meaning of Section 3(i) of the Act, and the exclusive representative of a bargaining unit comprised of Respondent's employees including those employees in the job title or classification of Clerk V (Unit). Charging Party is a public employee within the meaning of Section 3(n) of the Act, a member of the Unit, and until her termination on September 4, 2012, she was employed by Respondent as a Clerk V. AFSCME and Respondent are parties to a collective bargaining

agreement (CBA) for the Unit which provides a grievance procedure culminating in arbitration. Charging Party alleges that Respondent unlawfully terminated her employment on September 4, 2012.

On or about July 10, 2012, Carter became embroiled in a workplace dispute with supervisor, Josie Ross, concerning the timely order in which patients are to be registered and scheduled for treatment. Carter claims that Ross was loud and unprofessional, and that Ross insisted that Carter stop what she was doing, and correct a charting error Carter allegedly had made earlier. Carter claims that at the time, the clinic was busy and she was alone at the registration desk. Carter told Ross that once the rush of patients eased, Carter would correct her mistake. Carter claims that Ross continued to complain about Carter's work ethic.

A short time later, Ross called Carter to her office to offer Carter direction in the registration of patients. According to Carter, Ross was unreasonable and argumentative, and that Ross' tone of voice seemed so aggressive that she felt threatened. Carter departed Ross' office believing that Ross was trying to provoke a physical fight. Carter tried to contact the Union to complain about Ross' behavior. Before she could make contact, Ross ordered Carter to hang up the phone and leave the clinic. Carter attempted to contact the Union again, but again Ross demanded that Carter leave. Carter left the clinic as ordered.

On or about July 11, 2012, upon arrival at the clinic, Ross approached Carter telling her that she was suspended, and ordered security guard Angel Rodriguez to escort Carter from the clinic. Carter claims that Ross refused to explain the reason for the suspension.

On or about July 16, 2012, Carter received a letter in the mail from Denise Gilbert, RN, Director of Nursing (DON) of Respondent's West Cluster Clinics. AFSCME President, Carmen Goodloe, was copied (cc'd) on this correspondence. The letter alleged that Carter violated several of Respondent's rules of conduct, including insubordination and negligence in the performance of her assigned duties,

and that a hearing date of July 23, 2012 was scheduled. When Carter arrived at the July 23 meeting, she was not accompanied by an AFSCME representative. Carter admitted that she did not personally notify the Union of the meeting. Because of the Union's absence, Carter asked that the meeting be rescheduled. Hearing officer Ballard denied Carter's request and demanded that Carter call the Union and request a representative to appear. Ballard provided an opportunity for Carter to contact the Union. When Carter was unable to contact the Union to obtain representation, she contacted Respondent's Human Resources Director, James Dyson, who suggested that Carter ask DON Gilbert to reschedule the meeting. When Carter repeated Dyson's suggestion, Gilbert angrily terminated the meeting. The meeting was then postponed and rescheduled for August 6, 2012. The Union was copied (cc'd) on the notice for the August 6 meeting.

Attending the August 6 meeting representing the Employer were Ross, DON Gilbert, and hearing officer, Ballard. AFSCME Local 1111's Chief Steward Elissa Watson and Vice President Lisa Egan appeared on behalf of Carter. At the meeting, the Employer presented its case for Carter's termination. The Employer's stated reasons for Charging Party's termination were insubordination and negligence in the performance of her duties on the events of July 10, 2012, as well as the totality of the following recent events during Carter's employment. For example:

On **October 2, 2011**, Carter was verbally counseled for excessive tardiness and absenteeism;

On **May 17, 2011**, Carter was verbally counseled for excessive absenteeism;

On **February 22, 2011**, Carter was written-up for excessive, unexplained absenteeism;

On **December 21, 2010**, Carter was verbally counseled for excessive tardiness and absenteeism;

On **August 6, 2010**, Carter was written-up for threatening a hospital administrator, failure to follow the instructions of a supervisor, intimidation of a co-worker, gross insubordination, and patient, employee, or visitor abuse; she received a 29 day suspension.

On **June 21, 2010**, Carter was written-up for job abandonment, disruptive behavior in the clinic, and patient or employee abuse;

On **April 13, 2010**, Carter was written-up for excessive absenteeism;
On **February 19, 2010**, Carter, represented by AFSCME, was counseled w/regard to her attendance and duties;
On **September 28, 2009**, because of her disruptive behavior, Carter was transferred from psychiatry to general medicine;
On **March 27, 2009**, Carter was written-up for disrespecting a patient;
On **February 25, 2009**, Carter was written-up for disrespecting a patient;
In **May 2008**, Carter and another employee caused a disturbance in the cancer center;
In **February 2008**, Carter and another employee caused a disturbance at the clinic reception desk;
On **September 7, 2005**, Carter was written-up for job abandonment;
On **August 1, 2005**, Pre-disciplinary meeting for insubordination and failure to follow the instructions of a supervisor;
On **May 15, 2005**, Carter was written-up for job abandonment.

The Union argued that Carter's suspension was inappropriate, and suggested that she receive a verbal reprimand. On August 8, 2012, Watson filed a grievance on behalf of Carter, challenging her suspension, and advanced the issue to arbitration on August 16, 2012. On August 30, 2012, Carter received letter from hearing officer Ballard stating her recommendation that Carter's employment with the County be terminated. On September 4, 2012, Carter received notice that her employment with the County had been terminated. A grievance hearing concerning the suspension and the termination was convened during the week of December 1, 2012, the results of which are not known.

On September 11, 2012, Carter filed a complaint with the Equal Employment Opportunity Commission and/or the Illinois Department of Human Rights (EEOC/IDHR) alleging discrimination based on "American's with Disabilities Act" (sex, disability, & retaliation). Her charge with EEOC/IDHR was dismissed on September 13, 2012, due to lack of evidence.

II. DISCUSSION AND ANALYSIS

Charging Party alleges that Respondent violated Section 10(a)(1) of the Act when it interfered with her protected rights. Charging Party appears to be alleging that she was unjustly terminated and/or

that she was denied her right to union representation during the disciplinary process. Charging Party has failed to raise an issue of law or fact sufficient to warrant a hearing on either of these claims.

Employees covered by the Act have the right to union representation during an investigatory interview if the employee reasonably believes that the interview may result in discipline. Stephenson County Sheriff, 21 PERI ¶223 (ILRB SP 2005), Eisenberg and Chicago Transit Authority, 17 PERI ¶3018 (ILRB LP 2001). This right derives from the decision of the United States Supreme Court in NLRB v. J. Weingarten, Inc., 420 U.S. 251 (1975), upholding a rule adopted by the NLRB. Under that decision, and ILRB precedent applying the Weingarten rule to employees covered under the Act, an employee's Weingarten rights to union representation arise when (1) the meeting is investigatory in nature; (2) the employee reasonably believes that discipline may result; and (3) the employee requests union representation. NLRB v. J. Weingarten, Inc., Stephenson County Sheriff, and Eisenberg and Chicago Transit Authority, *supra*.

Thus, Weingarten rights attach only in the context of an investigatory meeting or interview, where a union representative may assist the employee in responding to questions or accusations. However, by Charging Party's own account, her attempts to secure Union representation on July 10, 2012 were made after her meeting with Ross had ended and as Ross was ordering Charging Party to leave the clinic. In this context, it cannot be said that Charging Party was denied the right to union representation during an investigatory interview.

While it appears that the Employer gave the Union notice in advance of the July 23, 2012 meeting, it was Charging Party's responsibility to request a union representative and to make arrangements for a union representative to be present. NLRB v. Weingarten, 420 U.S. 251 (1975). She did not do so. In fact, she apparently made no attempt to secure union representation before the meeting on July 23. There is simply no evidence that the Employer attempted to thwart or interfere with her right

to union representation on that day. In fact, hearing officer Ballard provided Carter an opportunity to notify and obtain union representation. Additionally, when Carter was unable to secure Union representation, Respondent's Human Resources Manager Dyson suggested that the meeting be postponed to August 6, 2012. On that date, Carter appeared accompanied by AFSCME representatives.

There is also no evidence that Charging Party's termination was in violation of the Act as it does not appear that she was terminated in retaliation for concerted, protected activity. Section 10(a)(1) provides that it shall be an unfair labor practice for an employer or its agents to interfere with, restrain or coerce public employees in the exercise of the rights guaranteed in this Act. In order to obtain a complaint on a Section 10(a)(1) allegation, Charging Party must make some showing that she engaged in protected activity, that Respondent knew of that activity, and that Respondent took adverse action against her as a result of her involvement in that activity. Kirk and Chicago Housing Authority, 6 PERI ¶3013 (IL LLRB 1990); Gale and Chicago Housing Authority, 1 PERI ¶3010 (IL LLRB 1985).

In this case, Charging Party has presented no evidence to indicate that she was suspended and later terminated as a result of concerted, protected activity. While the suspension and termination came after an attempt to secure union representation, Charging Party has provided no evidence of a causal connection between her requests for union representation and her termination.

III. ORDER

Accordingly, the instant charge is hereby dismissed. Charging Party may appeal this dismissal to the Board at any time within 10 calendar days of service hereof. Such appeal must be in writing, contain the case caption and number, and must be addressed to General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103. Appeals will not be accepted in the Board's Springfield office. In addition, any such appeal must contain detailed reasons in support thereof, and the party filing the appeal must provide a copy of its appeal to all other persons or

organizations involved in this case at the same time the appeal is served on the Board. The appeal sent to the Board must contain a statement listing the other parties to the case and verifying that a copy of the appeal has been provided to each of them. An appeal filed without such a statement and verification will not be considered. If no appeal is received within the time specified herein, this dismissal will become final.

Issued in Springfield, Illinois, this 21st day of December, 2012.

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Melissa Mlynski, Executive Director