STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Ronald D. Butler,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. L-CA-14-004
	)	
Chicago Transit Authority,	)	
	)	
Respondent	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD LOCAL PANEL

On October 18, 2013, Executive Director Melissa Mlynski dismissed the unfair labor practice charge filed by Ronald D. Butler (Charging Party) in the above-captioned case. The Charging Party alleged that the Chicago Transit Authority (Respondent) engaged in unfair labor practices within the meaning of Section 10(a)(1) of the Illinois Public Labor Relations Act, 5 ILCS 315/10(a)(1) (2012), by denying his right to union representation under the holding in NLRB v. Weingarten, Inc., 420 U.S. 251 (1975).

The Charging Party filed a timely appeal of the Executive Director's Dismissal pursuant to Section 1200.135(a) of the Board's Rules and Regulations, 80 Ill. Admin. Code §1200.135(a). Respondent did not file a response. After reviewing the record, appeal and response we uphold the Executive Director's Dismissal.

Butler, a bus operator, experienced a nose bleed while on a layover, and was relieved of driving duties that day. Thereafter a dispute arose concerning whether the incident could be categorized as "injured on duty" and concerning leave requested the following day for medical consultation. Upon his returning to work, the manager of Butler's garage told him he was in

violation of sick book procedures because he had not called in to report an illness one hour before starting work, and that he had two prior rule violations within the prior 12 months. Butler asked for presence of a Union representative, the manager called one, and in Butler's presence explained the alleged violation, disciplinary history, and his recommendation for a one-day suspension. During the conversation, Butler experienced a second nose bleed, and the phone conversation was terminated. After controlling the bleeding, Butler contacted the union representative who told him to return to the meeting. Once there, he was asked to sign a notice of discipline. He refused to sign, but asserted that he had been denied his Weingarten rights.

Butler then filed the instant charge. In a position statement, CTA cites an arbitration decision for the proposition that Weingarten does not require that a union representative be physically present.

The Executive Director dismissed the charge, reasoning primarily that the conversation between the manager, Butler and the union representative was not investigatory and therefore no right to representation arose under Weingarten. Rather, the manager appeared to have already determined to discipline Butler, and the conversation consisted of him advising Butler of that fact and of his reasons for doing so.

The Executive Director gave an alternative basis for dismissal, stating that even if the conversation had been investigatory, the manager suspended the conversation as soon as Butler requested a representative and resumed it only after he had a union representative on the phone. Even after the conversation was suspended to tend to the second nose bleed, Butler was able to talk to his union representative and receive advice.

Butler timely appealed the dismissal; however, a substantial portion of his appeal letter deals with an alleged violation of the Family Medical Leave Act and the incorrectness of the

discipline imposed upon him. The Board need not consider whether the discipline was properly imposed—that is a matter for a grievance procedure—and it does not enforce the FMLA.

Butler's appeal letter also asserts the Executive Director was wrong to dismiss the Weingarten charges. He claims the physical absence of a union representative is permissible only if both the union and by the employee agree. He states there was no such agreement here, by which he presumably means he did not agree to physical absence.

Butler's appeal does not deal with the Executive Director's primary rationale that the meeting was informational rather than investigatory and, hence, no Weingarten rights attached. That there is no right to representation at a meeting called merely to inform an employee of the imposition of discipline is well settled. Baton Rouge Water Works Co., 246 NLRB 995 (1979); Bd. of Educ. of the City of Chicago (Williams), 20 PERI ¶164 (IL ELRB 2004). That the meeting was not investigatory is fully consistent with Butler's description. In light of that precedent and Butler's description of the meeting, and in the absence of any countervailing argument by Butler, we affirm the dismissal because no Weingarten rights attach to a meeting that is merely informational.

BY THE LOCAL PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

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

/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 December 17, 2013; written decision issued at Chicago, Illinois, January 31, 2014.

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DISMISSAL

On July 15, 2013, Charging Party, Ronald D. Butler, filed the above referenced charge with the Local Panel of the Illinois Labor Relations Board, alleging that Respondent, Chicago Transit Authority (CTA or Employer) engaged in unfair labor practices within the meaning of Section 10(a) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2012), *as amended.* Following an investigation conducted pursuant to Section 11 of the Act, I determine 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 AND POSITION OF THE PARTIES

Respondent is a public employer within the meaning of Section 3(o) of the Act. The Amalgamated Transit Union, Local 241, is a labor organization within the meaning of Section 3(i) of the Act and the exclusive representative of a bargaining unit composed of CTA employees, including those employees in the job classification or title of Bus Operator (Unit). Butler is a public employee within the meaning of Section 3(n) of the Act, employed by the CTA as a Bus Operator, and is a member of the Unit. The CTA and Local 241 are parties to a

collective bargaining agreement which provides a grievance procedure culminating in arbitration.

On June 26, 2013, while Butler was on layover at the Harrison Street and Michigan Avenue terminal, he suffered a spontaneous nose bleed. He notified a supervisor who happened to be at the terminal, who in turn notified an ambulance and North Park Garage Transportation Manager Edward Canty. The nose bleed required several minutes to control, using an ice pack and pressure. Fire department paramedics provided treatment, but Butler declined transportation to a hospital.

Canty responded to the scene along with a replacement driver. It had apparently been determined by the supervisor and Canty that Butler needed to be relieved of his driving duties for the day. Canty transported Butler back to the garage where he prepared an incident report and told Butler that the incident needed to be recorded in the "sick book." Butler stated that the episode should be listed as injured on duty because it occurred in the course of employment. Canty denied that categorization. Butler then asked to be listed as using FMLA, and contacted Stephanie Jones for approval for one-half day on 26th and full day to see his doctor on 27th.

Once at the garage, Canty told Butler that he was in violation of sick book procedures because he did not call in to report an illness at least one hour before starting work. Canty also said that Butler had two previous rule violations within the past twelve months. Butler asked how that was possible since the illness occurred spontaneously during his tour of duty. Sensing he was about to be disciplined, Butler stopped responding to Canty and requested a Union representative's presence.

Canty, using his personal cell phone, telephoned Local 241 representative Michael Barron, who participated in the interview via speakerphone. Canty, in the presence of Butler,

explained Butler's alleged current violation and previous disciplinary history to Barron, and that he was recommending suspension for one day, effective July 2, 2013. As the conversation between Canty and Barron went on, Butler experienced another nose bleed episode and asked to be excused from the meeting to tend to the second nose bleed. Contact with Barron was terminated while Butler was away. After getting control of the bleeding, Butler privately re-contacted Barron who advised Butler to return to the meeting. Butler then returned to the meeting with Canty where he was asked to sign a notice of discipline. Butler refused to sign the report, but noted on the report that he was denied his Weingarten rights.

In his charge, Butler alleges that the CTA violated his right to have a Union representative present during his conversation with Canty. In its response to the charge, citing an arbitration decision, American Federation of Government Employees, ARBISH 10866, 2008 WL 6091973 (2008), the CTA asserts that "a union representative need not be physically present as representation by telephone is sufficient."

II. DISCUSION AND ANALYSIS

In NLRB v. Weingarten, 420 U.S. 251 (1971), an employee's right to union representation arises when the employee reasonably expects discipline to be a result of a disciplinary meeting, and when the employee requests the presence of a union representative. An employer faced with an employee's request for union representation has three options: 1) grant the request; 2) discontinue the interview; 3) offer the employee the choice of continuing the interview unaccompanied by a union representative or of having no interview. The Board adopted Weingarten in Morgan and the State of Illinois, Departments of Central Management Services and Corrections 1 PERI ¶2020 (SLRB 1985). An employer may proceed to discipline an employee based on information obtained from other sources and not from the interview. Id.

In this instance, Charging Party has presented insufficient evidence of a Weingarten violation to raise an issue for hearing. There was no interrogation or solicitation of information from Butler during the interview with Canty. It appears that Canty's decision to discipline Butler was based on Canty's observation of the current incident and a review of Butler's performance over the past twelve months. There is no right to union representation where the disciplinary action has been decided and when the purpose of the meeting is to inform the employee of the discipline to be imposed. City of Chicago (Department of Buildings), 15 PERI ¶3012 (Il LLRB 1999).

Even if the conversation between Canty and Butler were deemed to be investigatory in nature, there is still insufficient evidence of a Weingarten violation. While Butler complains that Canty denied his right to Union representation, the reality is that once Butler requested Union representation, Canty suspended the session until Barron was on the phone. Moreover, when Butler was tending to the second nose bleed, he personally contacted Barron for additional advice. Based on the foregoing, there is no basis for issuance of a complaint in this matter.

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. Any such appeal must be in writing, contain the case caption and number, and be addressed to the 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 18th day of October, 2013.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Melissa Mlynski
Executive Director