

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

Dontay Brassel,)	
)	
Charging Party)	
)	
and)	Case No. L-CA-14-031
)	
City of Chicago,)	
)	
Respondent)	

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

On February 25, 2014, Executive Director Melissa Mlynski dismissed an unfair labor practice charge filed by Charging Party Dontay Brassel against Respondent City of Chicago. The charge alleged that the City had violated Section 10(a) of the Illinois Public Labor Relations Act, 5 ILCS 315/10(a) (2012), by violating terms of a collective bargaining agreement in rebidding shifts and bumping Brassel, a truck driver, from his previous shift.

After the charge was filed, a Board agent investigating the matter requested additional information from Charging Party. Charging Party responded by asking the Board agent to obtain the information from Respondent. The Executive Director dismissed the charge, finding no evidence of retaliation and noting that, because rebidding was the basis of the grievance, that action could not constitute retaliation for the grievance.

Charging Party filed a timely appeal of the Dismissal pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200 through 1240.¹ He primarily

¹ On the same date she dismissed these charges, the Executive Director dismissed charges Brassel had filed against his union in Case No. S-CB-14-014. It is not entirely clear whether Brassel intended to

argues that the Board agent erred in failing to subpoena information from Respondent as he had requested. This argument is without merit. While Section 11(b) of the Act, 5 ILCS 315/11(b) (2012), grants the Board the authority to issue subpoenas, see Harbin v. Local 744, Int'l Bhd. of Teamsters, 198 Ill. App. 3d 788 (1st Dist. 1990); North Shore Sanitary Dist. of Lake Cnty. v. Ill. State Labor Relations Bd., 195 Ill. App. 3d 744, (1st Dist. 1990), our regulations limit this power to periods *following* the issuance of a complaint.² It is incumbent upon the Charging Party to supply sufficient information to warrant the Board's issuance of a complaint, and when asked to provide information the Board agent found necessary, he failed to do so.

Despite rejecting Charging Party's argument on appeal and reaffirming Charging Party's obligation to supply sufficient information to warrant issuance of a complaint, we nevertheless reverse the Dismissal and remand for further investigation. Our examination of the record suggests there may be two parts to Charging Party's allegations, a fact that may have been obscured by his insistence upon the Board agent's issuance of subpoenas. In his charge, Charging Party alleges potential violation of the collective bargaining agreement by rebidding shifts, which the Executive Director correctly noted could not be the basis for a claim of retaliation or warrant issuance of a complaint. However, in the narrative of the charge and in his objection to the time limit imposed by the Board agent for supplying additional information, Charging Party also makes reference to a transfer from "Loop Operations" to "Traffic Services." We cannot ascertain from the investigative record as currently constituted whether this is a description of the same employment action, a description of something that necessarily follows

appeal from both dismissals, but we are treating his correspondence that way and are issuing a separate decision in that case.

² "Following the issuance of a complaint for hearing or a notice of representation hearing, *the Board*, upon the request of an Administrative Law Judge or upon the written application of a party, *shall have the power to issue subpoenas* for witnesses and subpoenas for documents." 80 Ill. Admin. Code §1200.90 (emphasis in original, denoting quotation from the Act).

with a change in shifts, or a description of a separate employment action that could conceivable have been implemented in retaliation for grieving the rebidding of shifts. To clear up the ambiguity on this point, we reverse the dismissal and remand for further investigation.

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 May 13, 2014; written decision issued in Chicago, Illinois on June 12, 2014.

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City of Chicago,)	
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Respondent)	

DISMISSAL

On October 19, 2013, Dontay Brassel (Charging Party or Brassel) filed a charge in Case No. L-CA-14-031 with the Local Panel of the Illinois Labor Relations Board (Board), in which he alleged that the City of Chicago (Respondent or Employer) engaged in unfair labor practices within the meaning of Section 10(a) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012) *as amended* (Act). After an investigation conducted in accordance with Section 11 of the Act, I determined that the charge fails to raise an issue of law or fact sufficient to warrant a hearing and issue this dismissal for the following reasons.

I. INVESTIGATORY FACTS AND POSITION OF THE CHARGING PARTY

At all times material, the Charging Party is employed by the Respondent under the title of Motor Truck Driver. The Charging Party alleges that the Respondent violated the Act when it violated sections of the collective bargaining agreement (CBA) between the Employer and his Union, the International Brotherhood of Teamsters, Local 700 (Union).

As background, Brassel states that Superintendent Tommy Johnson, member of the Employer, stated in May of 2013, that he was going to re-bid all shifts for all drivers in the

Department of Streets and Sanitation Loop Operations. As a consequence, Brassel claims that he was bumped from his shift, in August of 2013, in violation of the CBA and past practice. Brassel alleges that Johnson did not have authorization to re-bid shifts per the CBA. Additionally, Brassel alleges that Johnson's decision to transfer him to Traffic Services demonstrates Johnson's retaliation against him for talking to his Union about filing a grievance regarding the Employer's decision to re-bid shifts.¹

By letter dated October 25, 2013, the Board agent asked Brassel to provide evidence to support his charge. In response, the Charging Party told the Board agent to request, from the Employer, specific information and documents pertinent to the charge. In addition, Brassel also requested that the Board agent request a copy of Johnson's personal work history from the Employer.²

Lastly, Brassel states that his transfer to a different shift came just days after he told Johnson he would be filing a grievance over the re-bids. Brassel also asserts that Johnson stated "I don't doubt that you will" when Brassel informed him he planned to file a grievance; a statement that Brassel believes is indicative of Johnson's retaliatory mindset.

II. DISCUSSION AND ANALYSIS

In the instant case, the Charging Party has failed to provide sufficient information to support the charge. Specifically, Charging Party has failed to provide evidence to establish how the conduct referenced in the charge involved the Charging Party's exercise of rights under the

¹ On October 19, 2013, the Charging Party also filed a charge against the Union, in Case No. L-CB-14-014, for failing to pursue a grievance against the Employer regarding the alleged breach of the CBA.

² Brassel states that this information would show past incidents where Johnson practiced the same conduct raised in the charge. Brassel states that the Board agent has the responsibility to request this information under the Illinois Compiled Statutes and the Act. Brassel also states that Section 1200.90 of the Board's Rules and Regulations requires the Board agent to request this information. However, this rule provides: "[f]ollowing the issuance of a complaint for hearing..., the Board, upon the request of an Administrative Law Judge or upon written application of a party, shall have the power to issue subpoenas for witnesses and subpoenas for documents." 80 Ill. Admin. Code § 1200.90. (Emphasis added.)

Act. At best, Charging Party has identified a potential violation of the CBA between the Union and the Employer, but not a violation of the Act.

In order to obtain a complaint on a Section 10(a)(1) allegation, Brassel must make some showing that he engaged in protected activity, that Respondent knew of that activity, and that Respondent took adverse action against him as a result of his 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 the instant case, Brassel notified Johnson that he was going to file a grievance, which is protected activity. Subsequently, Brassel was transferred to a different shift. Even if I assume that this transfer was an adverse employment action, there is simply no evidence that the Employer's action targeted Brassel for his protected activity. In fact, Johnson notified employees in the Department of Streets and Sanitation Loop Operations that all shifts for all drivers were being re-bid. Brassel was not the only person targeted by the Employer's action, and the decision was made and communicated to employees before Brassel mentioned filing a grievance. Indeed, it was the Employer's plan to re-bid the shifts that caused Brassel to consider filing a grievance.

Furthermore, Charging Party's request for the Board agent to obtain additional information from the Employer puts the responsibility of establishing an issue of law or fact for hearing on the Board agent, when the responsibility should be on the Charging Party. In this case, Brassel did not submit sufficient evidence to link the Employer's action to Brassel's protected activity. Under these circumstances, the available evidence is insufficient to raise an issue for hearing in this case.

III. ORDER

Accordingly, the instant charge is hereby dismissed. The Charging Party may appeal this dismissal to the Board any time within 10 calendar days of service hereof. Such appeal must be in writing, contain the case caption and numbers and must be addressed to the General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois, 60601-3103. The appeal must contain detailed reasons in support thereof, and the Charging Party must provide it to all other persons or organizations involved in this case at the same time it 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 the appeal has been provided to them. The appeal will not be considered without this statement. If no appeal is received within the time specified, this dismissal will be final.

Issued in Springfield, Illinois, this 25th day of February, 2014.

**STATE OF ILLINOIS
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LOCAL PANEL**



**Melissa Mlynski
Executive Director**