STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

International Brotherhood of Teamsters, Local 700,	)	
Charging Party	)	
and	)	Case No. L-CA-14-063
County of Cook and Sheriff of Cook County,	)	
Respondents	)	

ORDER

On February 11, 2015, Administrative Law Judge Anna Hamburg-Gal, on behalf of the Illinois Labor Relations Board, issued a Recommended Decision and Order in the above-captioned matter. No party filed exceptions to the Administrative Law Judge's Recommendation during the time allotted, and at its May 19, 2015 public meeting, the Board, having reviewed the matter, declined to take it up on its own motion.

THEREFORE, pursuant to Section 1200.135(b)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code §1200.135(b)(5), the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.

Issued in Chicago, Illinois, this 19th day of May, 2015.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Kathryn Zeledon Nelson
General Counsel

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International Brotherhood of Teamsters, Local 700,	)	
Charging Party	)	Case No . L-CA-14-063
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County of Cook and Sheriff of Cook County,	)	
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ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On April 7, 2014, the International Brotherhood of Teamsters, Local 700 (Union or Charging Party) filed a charge with the Illinois Labor Relations Board's Local Panel (Board), alleging that the County of Cook and Sheriff of Cook County (Respondents) engaged in unfair labor practices within the meaning of Sections 10(a)(1) of the Illinois Public Labor Relations Act (Act) 5 ILCS 315 (2012). The charge was investigated in accordance with Section 11 of the Act and on May 13, 2013, the Board's Executive Director issued a Complaint for Hearing. A hearing was conducted on November 14, 2014, in Chicago, Illinois, at which time the Union presented evidence in support of the allegations and all parties were given an opportunity to participate, to adduce relevant evidence, to examine witnesses, to argue orally, and to file written briefs. 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

The parties stipulate and I find that:

1. The Respondents are public employers within the meaning of Section 3(o) of the Act.
2. The Respondent County is a unit of local government subject to the jurisdiction of the Board's Local Panel pursuant to Sections 5(b) and 20(b) of the Act.
3. The Union is an exclusive representative within the meaning of Sections 3(f) of the Act.

4. The Union is a labor organization within the meaning of Sections 3(i) of the Act.

II. ISSUES AND CONTENTIONS

The issue is whether the Respondents violated Section 10(a)(1) of the Act when they allegedly denied Correctional Officer Gerardo Martinez's right to union representation during an investigatory interview by deceiving him as to its purpose and potential impact, and by terminating his employment at least in part based on information he provided.

The Union argues that Martinez made a legitimate request for union representation during an unquestionably investigatory interview and that the Respondents unlawfully persuaded Martinez to continue by falsely telling him that his answers would not jeopardize his career. The Union further asserts that Martinez's later meeting with a Union representative, three hours after questioning began, did not satisfy the Respondents' obligation to provide union representation upon request where the Respondents misled the representative as to the interview's purpose. Finally, the Union asserts that the remedy in this case requires reinstatement because the Respondents admitted that they based their termination decision on Martinez's statements and failed to mention the interviews of corroborating witnesses in the synopsis of their investigation.

The Respondents argue that they apprised Martinez of his rights to union and legal representation during the course of their interview and that Martinez waived those rights. They conclude that they justifiably terminated probationary employee Martinez based on the totality of the investigation conducted by the Office of Professional Review for failing to provide medical attention to a detainee.

III. FINDINGS OF FACT

At all times material, Gerardo Martinez was a probationary correctional officer at the Cook County Jail assigned to the 3 pm to 11 pm shift.

On October 13, 2013, detainee Thomas Prater was beaten by gang members and suffered injuries. Martinez was on duty at the time. After the event, Prater alleged that Martinez failed to protect him while he was in custody and failed to provide him with medical attention.

On October 29, 2013, the Office of Professional Review (OPR) of the Cook County Sheriff's Office initiated an investigation into Prater's allegations. OPR usually informs correctional officers that they are under investigation by email or by paper notice. Martinez

received no such notice.

On November 1, 2013, around midday, OPR investigators Gregory Ernst and Juan Diaz arrived at Martinez's house to question him. Martinez was not home, so they waited for him in their unmarked car. When Martinez returned home at 12:45 pm, the investigators asked whether he had time to talk and told him it would take only five minutes.

Martinez got into the investigators' car and they drove to a Dunkin Donuts for coffee. In the car, the investigators asked whether Martinez knew why they were there. Martinez replied that he believed they wished to inquire about his lost weapon. The investigators informed Martinez that they were in fact conducting an investigation into alleged collusion between officers and inmates, specifically, with respect to an inmate named Thomas Prater.

When they arrived at the Dunkin Donuts, Martinez asked if he needed union representation. The investigators told Martinez that they could not tell him whether or not he needed union representation, but informed him that he was not "in trouble." They then asked Martinez whether he was willing to help them out in making arrests or by giving the names of individuals involved in the October 13, 2013 incident. Martinez asked whether helping them would jeopardize his career. They said it would not. Instead, the investigators explained that they would simply follow up with additional questions if Martinez provided information leading to an arrest. The investigators never notified Martinez that he was the subject of the investigation.

Upon sitting down in the restaurant, at approximately 1:20 pm, the investigators presented Martinez with a document entitled "Advice of Rights." The document stated the following:

> Before we ask you any questions, you must understand your rights:
>
> Although you might normally be expected to answer questions regarding your official duties, in this instance you are not required to do so. Your refusal to answer questions – for example, on the ground that the answer may tend to incriminate you – will not subject you to any disciplinary action by the Cook County Sheriff's Department of Cook County. Such refusal also cannot be any basis for adverse employment action against you by the Sheriff's Department or Cook County.
>
> This is a voluntary interview. You have the following rights:

> You have the right to remain silent
> Anything you say can be used against you in a court.
> You have the right to talk to a lawyer for advice before we ask you any questions and to have a lawyer with you during questioning.
> If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.
> If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time until you talk to a lawyer.
>
> **Waiver of Rights**
> I have read this statement of my rights and I understand what my rights are. I am willing to be interviewed. I understand what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Martinez skimmed the document and signed it at 1:20 pm.[1] The investigators signed the document as witnesses. They proceeded to ask Martinez about injuries that Prater sustained and what Martinez knew about the October 13, 2013 incident. After an hour of questioning, the investigators took Martinez to OPR's offices, where he waited in a conference room, so that the investigators could type up some paper work.

Later that day, Officer Zuniga[2] learned that OPR investigators had picked up Martinez for questioning and asked Union Steward David Koch to meet Martinez at OPR.

At approximately 5:30 pm, Koch arrived at OPR and asked Ernst why OPR was investigating Martinez. Koch and Ernst give conflicting accounts of Ernst's answer. According to Koch, Ernst stated that OPR was investigating Martinez's missing weapon. According to Ernst, he told Koch that OPR was conducting a criminal investigation into Martinez's failure to report a detainee's assault and his participation in cleaning up a crime scene. I credit Koch's testimony based on the witnesses' demeanor and on Ernst's description of Koch as a "straightforward guy."

Ernst then informed Martinez that Koch was there to see him and asked Martinez whether he wished to speak with Koch. Martinez asked Ernst whether he needed Koch's presence. Ernst replied that he could not give Martinez an answer to that question but stated that Martinez did not need to speak with Koch if he did not want to.

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[1] Ernst testified that he read Martinez the waiver of rights form, word for word.
[2] Zuniga's first name does not appear in the record.

According to Martinez, Ernst then advised Martinez to tell Koch that the investigation concerned Martinez's missing weapon. Ernst explained that Martinez's role in the investigation would be more helpful if fewer people knew about it. I credit Martinez based on demeanor and because such a credibility determination is consistent with the decision to credit Koch.

Martinez and Koch spoke briefly, for no more than 10 minutes, in Ernst's presence. During the meeting, Martinez told Koch that the investigation pertained to his missing weapon.[3] Martinez did not ask Koch to stay.

At approximately 7:30 pm, the investigators provided Martinez with a statement to sign. The statement is a four page document that summarizes the interview. The statement describes Martinez's account of the events of October 13, 2013 as follows: Martinez reported for work on October 13, 2013 on the 3 pm to 11 pm shift and was assigned to tier 2A. After detainees were returned from visitation, Martinez heard pounding at the door to 2A and observed that detainee Charles Prater was knocking on the window and was bleeding from the nose. Martinez asked Prater what happened. Prater said nothing happened. Another detainee told Martinez that he and Prater were just clearing the air and that Prater was ok. A third detainee told Martinez that the detainees would take care of it. After the incident, the detainees cleaned up the blood. Martinez again asked Prater if he was ok, to which Prater stated he was ok and just dizzy. Martinez asserts that Prater refused medical treatment and that Martinez then placed Prater into his cell. The statement further provides that Martinez was allowed to drink pop and eat during the interview, was allowed to make telephone calls and speak to his family and fiancée, was allowed to make changes to the statement, and that he was not coerced or intimidated into making the statement.

Ernst read the statement to Martinez. Martinez made six substantive changes to the statement and initialed each one. He crossed out a statement that said he had witnessed detainees use Prater's uniform to clean up his blood. He added that Prater "refused medical emergency." He corrected the statement that he was allowed to drink water and eat during the OPR interview, noting that he was allowed to drink pop, not water. He denied that he told the detainees to clean up and noted that they cleaned up on their own. Finally, he corrected a statement that said that he was allowed to make phone calls to his friends, stating that he was instead allowed to call his fiancée. Ernst confirmed that Martinez was permitted to use his phone while he was held in the OPR conference room and that Martinez was given food and pop during that time.

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[3] I do not credit Ernst's testimony that the pair spoke alone for approximately 25 minutes.

Martinez confirms that the investigators stated that he could stop the questioning at any time and that he had the opportunity to have a union representative or an attorney present. Martinez did not expressly state that he wanted a union representative to be present during the questioning.

After Martinez signed the statement, the investigators again assured Martinez that he was not in trouble and that he was simply there to help them out. Martinez arrived home at approximately 8 pm.

The investigation into Prater's assault lasted three and a half weeks. During the course of the investigation, OPR investigators conducted six substantive interviews, including an interview of the victim, staff, and other detainees who were housed on the tier in question.

Ernst prepared a synopsis of the investigation. In relevant part, the synopsis provides that Prater banged on the door after he was attacked by 10 detainees. Martinez asked him what happened and Prater told him that he had fallen. According to Prater, Martinez told him that he could not do anything and did not want to get into trouble. Prater stated that the detainees took his uniform and used it to clean the blood off the floor and walls and told him not to say anything. Prater heard an inmate tell Martinez that he and Prater were just clearing the air. Prater stated that Martinez allowed the detainees to throw away his uniform. According to Prater, Martinez denied him medical attention and then locked him up. Prater stated that he waited until the next shift to report the incident. The synopsis of the investigation provides in relevant part that " based on the statements made by detainee Prater and statements made by C/O Martinez regarding his failure to protect, report, and provide medical attention to detainee Prater, this case is Sustained."

The full report of the investigation also contains summaries of interviews with other inmates who confirm that Prater was attacked and that Martinez did not provide Prater with medical attention. Detainee Jerry Johnson stated that Prater went to the door of the tier following the assault, "full of blood," and attempted to get Martinez's attention. Johnson recounts that Martinez walked to the door and grabbed his radio to call in a 10-10, but that he did not make the call after a detainee instructed him not to. Detainee Travis Dixon likewise confirmed that "Martinez is a good officer, but he did not do anything the day of the incident, including never calling a 10-10 over the radio."

At hearing, investigator Ernst testified that he gave particular weight to the statements made by the witness who corroborated both Martinez's and the victim's account of the incident.[4]

Following the investigation, OPR recommended that Martinez be terminated. OPR's recommendation further states the following:

> by not reporting the incident, C/O Martinez jeopardized the safety and security of the Department of Corrections...thereby he violated Sheriff's Order 11.2.20.0. Had this incident not been detected by the following shift, the incident may have escalated into a volatile situation within the division. His conduct also endangered the health and safety of detainee Prater [sic], who did not receive medical attention for over three hours.

On January 23, 2014, the Respondents informed Martinez that he was terminated based on OPR's investigation.

IV. DISCUSSION AND ANALYSIS

1. The Alleged *Weingarten* Violation

The Respondents violated Section 10(a)(1) of the Act when they questioned Martinez about his involvement in Prater's injury after Martinez invoked his Weingarten rights.

Public employees in Illinois have the well-established right to union representation in meetings that might reasonably result in disciplinary action. Cnty. of Stephenson, 21 PERI ¶ 223 (IL LRB-SP 2005); Morris and State of Ill., Dep't of Cent. Mgmt. Serv. (Public Aid), 20 PERI ¶ 81 (IL LRB-SP 2004); City of Highland Park, 15 PERI ¶ 2004 (IL SLRB 1999); Gerald Morgan and State of Ill., Dep't of Cent. Mgmt. Serv. (Corrections), 1 PERI ¶ 2020 (IL SLRB 1985). The right arises only when the following three circumstances are present: (1) the meeting is investigatory; (2) the employee reasonably believes that disciplinary action may result; and (3) the employee makes a legitimate request for union representation. Cnty. of Stephenson, 21 PERI ¶ 223; City of Aurora, 20 PERI ¶ 77 (IL LRB-SP 2004); City of Chicago (Dep't of Buildings), 15 PERI ¶ 9012 (IL LLRB 1999); City of Chicago (Dep't of Police), 5 PERI ¶ 3025 (IL LLRB 1989); State of Ill. (Dep'ts of Cent. Mgmt Serv. and Empl. Security), 4 PERI ¶ 2005 (IL SLRB 1988); Morgan and State of Ill., 1 PERI ¶ 2020.

Once an employee makes a request for representation under these circumstances, the employer can (1) deny the request, discontinue the interview and obtain the information through other means; (2) wait until the union representative arrives before commencing with, or

[4] Ernst erroneously stated that this witness was Prater's cellmate.

continuing, the interview; or (3) request that the employee waive his right to union representation. Cnty. of Stephenson, 21 PERI ¶ 223; Morris and State of Ill., Dep't of Cent. Mgmt. Serv. (Public Aid), 20 PERI 81 (IL LRB-SP 2004), Chicago Park Dist., 17 PERI ¶ 3012 (IL LLRB 2001), City of Chicago (Dep't of Aviation), 13 PERI ¶ 3014 (IL LLRB 1997). However, the Employer violates section 10(a)(1) of the Act if it simply denies the request and proceeds with the interview. Chicago Park Dist., 17 PERI ¶ 3012.

Here, Martinez's interview was investigatory. An interview is investigatory if it is one where the employer seeks facts or evidence in support of the perceived misconduct; an interview is not investigatory if its sole purpose is to mete out previously-determined discipline. Eisenberg/Chicago Transit Auth., 17 PERI ¶ 3018 (IL LRB-LP 2001); State of Ill. Dep'ts of Cent. Mgmt. Serv. and Empl. Security), 4 PERI ¶ 2005. There is little dispute here that OPR interviewed Martinez to determine whether Martinez failed to protect detainee Prater and failed to provide him medical attention, as Prater alleged. Cnty. of Cook and Sheriff of Cook Cnty., 28 PERI ¶ 155 (IL LRB-LP 2012) (interview investigatory where superior asked employee about her actions during an incident that placed her in a position of defending or incriminating herself); Ill. Dep'ts of Cent. Mgmt. Serv. and Ernpl. Security (Regina Vaughn), 4 PERI ¶ 2010 (IL SLRB 1988) (interview is investigatory where employee must defend against allegation or risk incrimination).

Further, Martinez had a reasonable belief that disciplinary action might result from the questioning because the investigators informed him that his answers could be used to support the imposition of criminal sanctions. The standard for determining whether an employee reasonably expects discipline is objective, measured in light of all the circumstances of the case. City of Ottawa, 25 PERI ¶ 43 (IL LRB-SP 2009) (finding employee's actual belief concerning discipline to be irrelevant); see also Chicago Transit Auth., 17 PERI ¶ 3018; State of Ill., (Dep'ts of Cent. Mgmt. Serv. and Empl. Security), 4 PERI ¶ 2005. An interview that may subject an employee to criminal sanctions may clearly also form the basis for disciplinary action. State of Ill. (Dep'ts of Cent. Mgmt. Servs. and Corrections), 1 PERI ¶ 2020 (Board noted that employee had been Mirandized and observed that "it is further clear to us that the results of such investigation could also be used as the basis of disciplinary action"). Here, the investigators provided Martinez a Miranda warning and thereby fostered a reasonable belief that disciplinary action might likewise result from Martinez's answers.

Notably, Martinez maintained his reasonable belief that disciplinary action might result from the questioning, despite the investigators' earlier reassurances that the interview would not place his career in jeopardy. First, the Miranda warning raised ambiguity concerning the purpose and effect of the investigation, notwithstanding the investigators' contrary assertions. Lake Elsinore United School Dist., 28 PERC ¶ 185 (CA LRB 2004) (employee reasonably feared discipline despite assurances that discipline would not result, where atmosphere was relatively formal and the meeting was intimidating); but see Spartan Stores, Inc. v. NLRB, 628 F.2d 953, 958 (6th Cir. 1980) (supervisor' s assurance of no discipline meant the employee could not have reasonably believed the meeting might result in discipline); Amoco Chemicals Corp., 237 NLRB 394, 397 (NLRB 1978) (supervisor's unequivocal statement that no disciplinary action would occur as result of meeting effectively dissipated any reasonable grounds to fear disciplinary action). This ambiguity reasonably intensified Martinez's apprehension of discipline since, as a probationary employee, he was already vulnerable to severe punishment for any policy violations he may have committed. City of Ottawa, 25 PERI ¶ 43(noting that employee's status as probationary employee weighed in favor of finding that he had a reasonable belief that disciplinary action would result, even though he was not formally charged).

Third, Martinez made a legitimate request for representation when he asked the investigators whether he needed a union representative to be present. The Board has held that the request for 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. An employee's inquiries as to whether he needs a union representative, such as those expressed by Martinez in this case, trigger the Weingarten right. Stephenson Cnty. Sheriff and Cnty. of Stephenson, 21 PERI ¶ 223 (employee's question, "am I entitled to representation, to representation by the union?" triggered Weingarten rights); NLRB v. New Jersey Bell. Tel. Co., 936 F.2d 144, (3rd Cir. 1991), enforcing 300 NLRB 42 (1990) (Employee's question at outset of investigatory interview as to whether she should have union representative present was sufficient to trigger Weingarten rights); Nat'l Labor Rel. Bd. v. Ill. Bell Telephone Co., 674 F.2d 618 (7th Cir.1982)("Should I have someone in here with me, someone from the union?" triggered Weingarten rights); Southwestern Bell Telephone Co., 227 N.L.R.B. 1223, 1223 (1977) (holding that employee inquiries during investigatory interviews asking whether union representation was needed, and more generally, about "calling in" the Union, were sufficient to trigger Weingarten).

Under these circumstances, Martinez's Weingarten rights attached and the Respondents were obligated to provide him with the following three options: (1) deny the request, discontinue the interview and obtain the information through other means; (2) wait until the union representative arrives before commencing with, or continuing, the interview; or (3) request that the employee waive his right to union representation. Cnty. of Stephenson, 21 PERI ¶ 223; Morris and State of Ill., Dep't of Cent. Mgmt. Serv. (Public Aid), 20 PERI ¶ 81, Chicago Park Dist., 17 PERI ¶ 3012, City of Chicago (Dep't of Aviation), 13 PERI ¶ 3014.

The Respondents in this case did not provide or explain any of these options to Martinez. Instead, they dissuaded him from exercising his right to union representation, which is not one of the options the Board recognizes as available to the employer under the Act.[5]

Moreover, the investigators' coercive conduct precludes a finding that Martinez waived his Weingarten rights by continuing the interview. An employee who waives his Weingarten rights must do so knowingly and voluntarily. Southwestern Bell Telephone Co., 227 NLRB at 1223. Careful scrutiny of a purported wavier is particularly important with respect to the Weingarten right because the "right being waived is designed to prevent intimidation by the employer." Id. at 1123 For that reason, "it would be incongruous to infer a waiver without a clear indication that the very tactics the right is meant to prevent were not used to coerce a surrender of protection." Id. at 1223. Here, the investigators patently misrepresented the gravity of Martinez's circumstances by falsely telling him that his answers would not jeopardize his career. In truth, as the investigators well knew, Martinez was the target of a formal, criminal investigation by OPR, which reasonably could—and ultimately did—end his career. Thus, Martinez's decision to continue the interview was not "knowing and voluntary" because it was based on false information that was intended to coerce his cooperation.

Furthermore, Martinez's waiver of his Miranda rights does not constitute a waiver of his Weingarten rights. Evidence that a party intended to waive a statutory right must be clear and unmistakable. Am. Fed'n of State, Cnty. & Mun. Emps. v. State Labor Rel. Bd., 190 Ill. App. 3d 259, 269 (1st Dist. 1989) (citing Vill. of Oak Park v. Ill. State Labor Relations Bd., 168 Ill. App. 3d 7, 20-21 (1st Dist. 1988)). Here, the "Waiver of Rights" form signed by

[5] This is the approach taken by the Illinois Appellate Court in an unpublished order, affirming the Board's decision in City of Ottawa, 25 PERI 43 (IL LRB-SP 2009). City of Ottawa v. Ill. Labor Rel. Bd., 2011 WL 10457949 (3rd Dist. 2011)("Talking the employee out of asking for union representation is not one of the options the Board recognizes as available to the employer under the Act.")

Martinez does not state that he waives his right to union representation and therefore does not constitute a waiver of his Weingarten rights. See also State of Ill., Dep'ts of Cent. Mgmt. Serv. and Corrections, 1 PERI ¶ 2020 (distinguishing between Miranda and Weingarten rights).

Contrary to the Respondents' anticipated assertion, the Respondents did not cure their violation by permitting Union representative Koch to speak with Martinez at 5:30 pm. Not only was the representation provided too late to be effective, it was also rendered ineffective by the investigators' coercive conduct. First, the Respondents had largely concluded their questioning of Martinez by the time Koch met with him and they were already typing a report summarizing his statements at the time. Accordingly, Koch's brief consultation with Martinez at that point did not further purposes of the Weingarten right, because the Respondents had already unlawfully solicited information from Martinez. Chicago Park Dist., 17 PERI ¶ 3012 (employer violates the Act if it proceeds with interview after employee's request for representation, without obtaining a waiver of employee's Weingarten right).

Second, the investigators' coercive tactics prevented Martinez from obtaining effective counsel from union representative Koch. Necessarily, a union representative cannot provide an employee with effective representation if he is not informed of the subject matter of the interview, either by the employee or by the employer. It is on this basis that the Illinois Appellate Court has spelled out an employer's obligation to provide the employee or the union representative with information about the subject matter of the interview. Ill. State Toll Highway Auth. v. Ill. Labor Rel. Bd., 405 Ill. App. 3d 1022, 1033 (2nd Dist. 2010); see also Pacific Telephone & Telegraph Co., 262 NLRB 1048 (1982) (employer violates the Act by refusing to inform Weingarten representative or employee of the nature of the matter being investigated), enfd. in relevant part by 711 F.2d 134 (9th Cir. 1983). Yet, in this case, the investigators coached Martinez to hide the true purpose of the investigation from union representative Koch by fostering Martinez's false understanding that he was a mere witness and by explaining that he would be more helpful to the investigation if no one knew he was providing information. Against this backdrop, they advised Martinez to tell Koch that the investigation concerned Martinez's missing weapon and thereby stymied Koch from providing effective counsel. United States Postal Service, 350 NLRB 441, 462 (2007) ("For the right to prior consultation [between the employee and the union representative] to have any meaning, the employee and the union

representative must have some indication of the matter being investigated because, without that knowledge, there is nothing about which to consult").

Thus, the Respondents violated Section 10(a)(1) of the Act when they continued to question Martinez after he made a legitimate request for representation without obtaining a waiver of Martinez's Weingarten rights.

2. The Remedy

The remedy in this case requires only the posting of a Board-issued notice and does not require reinstatement.

Make-whole relief for a violation of an employee's Weingarten rights is appropriate where an employer's decision to discharge or discipline was "predominantly dependent" upon information obtained through the unlawful interview or where an employer takes adverse action against an employee in retaliation for asserting his right to union representation.[6] Cnty. of Cook and Sheriff of Cook Cnty., 28 PERI ¶ 155; Cnty. of Stephenson, 21 PERI ¶ 223; City of Highland Park, 15 PERI ¶ 2004; City of Chicago (Dep't of Aviation), 13 PERI ¶ 3014.

A Notice of Posting is the appropriate remedy where an employer has sufficient independent evidence of employee wrongdoing, apart from the wrongful interview, to warrant an employee's discipline. Chicago Park Dist., 17 PERI ¶ 3012; Ill. Dep't of Cent. Mgmt. Serv., 16 PERI ¶ 2023 (IL SLRB 2000); City of Chicago (Dep't of Aviation), 13 PERI ¶ 3014.

Here, the Respondents did not base their termination decision predominantly on information obtained from Martinez's unlawfully solicited interview statement. Rather, Martinez's admissions were duplicative of information that the Respondents obtained from three other sources (inmates Dixon, Johnson, and Prater). Prater asserted that he banged on the door while bloody and advised Martinez that he needed medical attention, which Martinez never provided. Johnson confirms that Martinez observed Prater through the door, grabbed his radio to call in an emergency, but did not make the call because another detainee instructed him not to. Similarly, Dixon observed that Martinez failed to call in the emergency. Thus, the Respondents had ample basis on which to impose discipline, even absent Martinez's admissions that he observed Prater's injuries and did not report the incident. Cnty. of Cook and Sheriff of Cook

[6] The Union does not argue that the Respondents took adverse action against Martinez for asserting his right to union representation.

Cnty., 28 PERI ¶ 155 (employee's suspension was not a product of unlawful interview where information obtained was otherwise available to the Respondents by other means and need not have come through the interview).

The Respondents' asserted reliance on Martinez's statements, expressed in the synopsis of the investigation report, does not warrant an alternate conclusion. It merely reveals that the Respondents based their decision in part on Martinez's statements and in part on statements made by Prater. It does not indicate that the Respondents relied more heavily on Martinez's statements than on Prater's or that Martinez's statements were more significant to the outcome of the investigation. See Am. Fed. of State, Cnty. and Mun. Empl., v. Ill. Labor Rel. Bd., 2014 IL App (1st) 130655 ¶ 29 (predominant means superiority in importance or number). In fact, the existence of two detainees who confirm Prater's accusation weighs in favor of finding that Prater's account was equally if not more instrumental in justifying the outcome of the case. This conclusion is confirmed by investigator Diaz, who stated he gave "particular" weight to the statement made by one of those corroborating witnesses. Contrary to the Union's assertion, it is of little importance that the corroborating witness also confirmed Martinez's account (as noted by Diaz) because the focus of the inquiry was the veracity of Prater, the accuser. Chicago Park Dist., 17 PERI ¶ 3012 (make-whole remedy not appropriate where respondent had sufficient independent evidence of employee wrongdoing apart from the unlawfully obtained admissions); Ill. Dep't of Cent. Mgmt. Serv., 16 PERI ¶ 2023; City of Chicago (Dep't of Aviation), 13 PERI ¶ 3014.[7]

Thus, make-whole relief is not warranted here because the Respondents did not predominantly rely on the unlawful interview in making the termination decision.

[7] Martinez's status as a probationary employee also supports a finding that make-whole relief is not warranted where there is no evidence or argument the Respondents retaliated against him for invoking his right to union representation. In an unpublished decision, the Third District Appellate Court reversed a Board Order reinstating a probationary employee, where there was no indication that his employment was terminated because he asserted his right to union representation. In the absence of such an unlawful motive, the Court reasoned that the probationary employee's termination was not "dependent" upon anything and because he could have been dismissed without the need for the employer to justify his termination. City of Ottawa, 25 PERI ¶43 (IL LRB-SP 2009) rev'd in part by unpub. ord. No. 3-09-0365. The court's non-precedential reasoning is applicable here.

V. CONCLUSIONS OF LAW

1. The Respondents violated Section 10(a)(1) of the Act when they denied Correctional Officer Gerardo Martinez his Weingarten rights at a November 1, 2013 interview.
2. The remedy requires posting of a Notice, but not an order requiring the Respondents to make Martinez whole.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that Respondents, its officers and agents, shall:

1) Cease and desist from:
   a. In any like or related manner, interfering with, restraining, or coercing employees in the exercise of rights guaranteed them in the Act.
   b. Questioning Gerardo Martinez or any of its other employees after they have asserted their right to union representation, when Weingarten has attached, until such representation has been provided or until the Respondents have lawfully obtained a waiver of those rights;
2) Take the following affirmative action necessary to effectuate the policies of the Act:
   a. Post, at all places where notices to employees are normally posted, copies of the Notice attached to this document. Copies of this Notice shall be posted, after being duly signed, in conspicuous places, and be maintained for a period of 60 consecutive days. The Respondent will take reasonable efforts to ensure that the notices are not altered, defaced or covered by any other material.
   b. Notify the Board in writing, within 20 days from the date of this Decision, of the steps the Respondent has taken to comply with this order.

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, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 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 of 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 11th day of February, 2015

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

/S/ *Anna Hamburg-Gal*

Anna Hamburg-Gal
Administrative Law Judge

NOTICE TO EMPLOYEES

FROM THE

ILLINOIS LABOR RELATIONS BOARD

Case No. S-CA-14-063

The Illinois Labor Relations Board, State Panel, has found that the County of Cook and Sheriff of Cook County have 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 and protection
- To refrain from these activities

Accordingly, we assure you that:

WE WILL cease and desist from interfering with, restraining, or coercing employees in the exercise of rights guaranteed them in the Act.

WE WILL cease and desist from questioning Gerardo Martinez or any of our other employees after they have asserted their right to union representation, when Weingarten has attached, until such representation has been provided or until the Respondents have lawfully obtained a waiver of those rights.

DATE _____

_____
County of Cook and Sheriff of Cook County
(Employers)

ILLINOIS LABOR RELATIONS BOARD

One Natural Resources Way, First Floor
Springfield, Illinois 62702
(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.