

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

Kenneth Sawyer,)	
)	
Charging Party,)	
)	
and)	Case No. L-CA-15-046
)	
City of Chicago,)	
)	
Respondent.)	

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

On July 29, 2015, Executive Director Melissa Mlynski dismissed a charge filed by Charging Party Kenneth Sawyer (Charging Party) in the above-captioned case. In his charge, the Charging Party alleged Respondent City of Chicago (Respondent) violated Section 10(a) of the Illinois Public Labor Relations Act, 5 ILCS 315/10(a) (2014), when it failed to give him a particular assignment in retaliation for filing a grievance.

The Executive Director dismissed the charge finding that the Charging Party failed to establish he had suffered an adverse employment action. She also found that even if the Charging Party had suffered an adverse action, he failed to present evidence of a causal connection between his protected activity and the Respondent's actions. 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. Adm. Code § 1200.135(a). The Respondent filed no response. After reviewing the record and appeal, we affirm the Executive Director's Dismissal for the reasons stated in that document.

BY THE ILLINOIS LABOR RELATIONS BOARD, LOCAL PANEL

/s/ Robert Gierut

Robert Gierut, Chairman

/s/ Charles Anderson

Charles Anderson

s/ Richard Lewis

Richard Lewis

Decision made at the Local Panel's public meeting in Chicago, Illinois on November 19, 2015,
written decision issued in Chicago, Illinois on January 29, 2016.

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

Kenneth Sawyer,

Charging Party

and

City of Chicago,

Respondent

Case No. L-CA-15-046

DISMISSAL

On February 26, 2015, Kenneth Sawyer (Charging Party) filed an unfair labor practice charge with the Local Panel of the Illinois Labor Relations Board (Board), in Case No. L-CA-15-046, alleging that the City of Chicago (Employer or Respondent) violated Section 10(a) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2014), *as amended*. 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 reasons stated below.

I. INVESTIGATORY FACTS

The Respondent is a public employer within the meaning of Section 3(o) of the Act. Charging Party is a public employee under the Act, employed by the Respondent as a Motor Truck Driver in the Department of Streets and Sanitation. As such, he is included in a bargaining unit (Unit) represented by Teamsters, Local 700 (Union). The Union and the Employer are parties to a collective bargaining agreement for the Unit, which includes a grievance procedure culminating in final and binding arbitration.

In this unfair labor practice charge, Charging Party asserts that he was supposed to be assigned to the Cold Start Program, but the Respondent assigned a different employee to that program after Charging Party filed a grievance on or about February 10, 2015.¹ Charging Party believes he should have been assigned to the Cold Start Program on or about February 14th through the 23rd of 2015.

By letter dated March 5, 2015, the Board agent assigned to the case advised Charging Party of the elements necessary to establish a 10(a) violation under the Act. By letter dated March 17, 2015, Charging Party submitted additional documents. The documents contained copies of written testimonies by him dating back to 2011 of issues he has had with the Respondent. Charging Party also included a certificate and announcement of his Union stewardship from 2005 and a recent police report in which he filed assault charges against one of his co-workers.

II. DISCUSSION AND ANALYSIS

Section 10(a)(2) of the Act provides that it is an unfair labor practice for an employer to discriminate in regard to hire or tenure of employment or any term or condition thereof in order to encourage or discourage membership in or support for any labor organization. 5 ILCS 315/10(a)(2) (2012). In order to establish a prima facie case that an employer has violated Section 10(a)(2), a charging party must prove that: (1) employee(s) engaged in union or other protected concerted activity; (2) the employer was aware of that activity; and (3) the employer took adverse action against the involved employee(s) for engaging in that activity in order to encourage or discourage union membership or support. New Lenox Fire Protection District, 24 PERI ¶ 78 (IL LRB-SP 2008) (citing City of Burbank v. Illinois State Labor Relations Board, 128 Ill. 2d 335 (1989)). There must be a causal connection between the employer's adverse

¹ The grievance apparently concerned the assignment of overtime.

employment action and the protected concerted activity. See Chicago Park District, 9 PERI ¶ 3016 (IL LLRB 1993).

In this case, Charging Party did provide evidence that he engaged in protected activity, including serving as a steward in the Union (at some point) and filing a grievance as recently as February 10, 2015. I will assume for the purpose of this Dismissal that Respondent knew of this protected activity. However, Charging Party has failed to establish that he suffered an adverse employment action when he was not assigned to the Cold Start Program. The charge and supporting documentation do not provide any details about the program and there is no explanation as to how Charging Party was harmed by not being assigned to the program. Nor did the Charging Party provide any explanation as to why he should have been entitled to the Cold Start Program assignment.

Moreover, even if I assume that Charging Party suffered an adverse employment action by not being assigned to the Cold Start Program, there is insufficient evidence that the Respondent acted in retaliation for Charging Party's protected activity. A public employer's discriminatory motivation may be established through direct evidence or based on circumstantial factors, including expressions of hostility towards protected activity together with knowledge of the employee's union activity; proximity in time between the employee's union activity and the employer's action; disparate treatment or a pattern of conduct which targets union supporters for adverse employment action; or shifting or inconsistent explanations regarding the adverse employment action. Id. at 345-346; County of Menard v. Ill. State Labor Relations Bd., 202 Ill. App.3d 878, 890-891 (4th Dist. 1990).

In this case, the alleged adverse employment action occurred just days after Charging Party filed a grievance, but timing alone is not sufficient to support an inference of animus. Pace

Suburban Bus Div. v. Ill. State Lab. Rel. Bd., State Panel, 406 Ill. App. 3d 484, 498 (1st Dist. 2010); City of Chicago (Dep't of Streets & Sanitation), 6 PERI ¶ 3020 (IL LLRB 1990). Other than timing, there is no evidence that would support a causal connection between the Charging Party's protected activity and the Respondent's actions. Consequently, this unfair labor practice charge fails to raise an issue of law or fact sufficient to warrant a hearing.

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 at Springfield, Illinois, this 29th day of July, 2015.

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



**Melissa Mlynski
Executive Director**