STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Sheena L. McMurray and Annie Maliongas,	)	
	)	
Charging Parties	)	
	)	
and	)	Case Nos. S-CA-12-008
	)	S-CA-12-010
State of Illinois, Department of Central Management Services (Department of Human Services)	)	
	)	
Respondent	)	

ORDER

On June 5, 2014 Administrative Law Judge Michelle N. Owen, 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 August 12, 2014 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the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.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 13th day of August 2014.

STATE OF ILLINOIS
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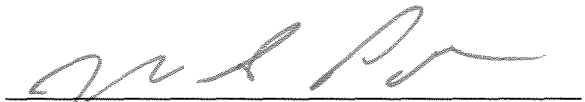

Jerald S. Post
General Counsel

STATE OF ILLINOIS
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State of Illinois, Department of	)	
Central Management Services	)	
(Department of Human Services),	)	
	)	
Respondent	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On July 8, 2011, Sheena L. McMurray (Charging Party or McMurray) and Annie Maliongas (Charging Party or Maliongas), filed separate unfair labor practice charges in Case No. S-CA-12-008 and Case No. S-CA-12-010, respectively, with the State Panel of the Illinois Labor Relations Board (Board) alleging that the State of Illinois, Department of Central Management Services (Respondent or Employer) violated Section 10(a)(1) of the Illinois Public Relations Act, 5 ILCS 315 (2012), as amended (Act). The charges were investigated in accordance with Section 11 of the Act, and on April 25, 2012, the Board's Executive Director issued a Complaint for Hearing in each case. On September 13, 2012, the undersigned consolidated the cases for hearing. A hearing was held on November 8, 2012, in Springfield, Illinois by the undersigned. All parties appeared at the hearing and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally. Written briefs were timely filed by both parties. 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 stipulated to the following:

1. At all times material, Respondent has been a public employer within the meaning of Section 3(o) of the Act.

2. At all times material, Respondent has been a unit of local government subject to the jurisdiction of the State Panel of the Board pursuant to Section 5(a) of the Act.

3. At all times material, each of the following persons were employed by Respondent in the title of Disability Claims Adjudicator Trainee and were public employees within the meaning of Section 3(n) of the Act:

a. Annie Maliongas

b. Sheena L. McMurray

c. Wade Gadberry

d. Dena Whetstone

4. At all times material, McMurray, Maliongas, and Gadberry were probationary employees in the title/classification of Disability Claims Adjudicator Trainee with the Department of Human Services' Rehabilitation Services Department (DHS).

5. At all times material, Whetstone was a certified employee in the title/classification of Disability Claims Adjudicator Trainee in the title/classification of Disability Claims Adjudicator Trainee with DHS.

6. At all times material, the title of Disability Claims Adjudicator Trainee has been in the RC-62 bargaining unit represented by the American Federation of State, County and Municipal Employees.

7. At all times material, the following persons occupied the title following their name and served as agents for Respondent to the extent that they carried out functions of their respective jobs for the agency:

a. Ann Robert, Bureau Chief-Disability Determination Services

b. Jessica Clem, Supervisor-Disability Determination Services

c. Barbara Morris, Section Chief-Disability Determination Services

d. Rhonda Pratt, Division Administrator-Disability Determination Services

8. At all times material, McMurray and other Disability Claims Adjudicators Trainees used Respondent's email system to communicate with one another about work and other issues.

9. In November 2010, Pratt spoke to the training class for disability adjudicating and encouraged trainees to come forward to voice their concerns about the training they were receiving as Disability Claims Adjudicator Trainees.

10. On or about June 30, 2011, Maliongas was told to report to a meeting.

11. On or about June 30, 2011, Respondent discharged Maliongas from its employ.

12. On or about July 6, 2011, toward the end of the work day, McMurray was told to report to a meeting.

13. On or about July 6, 2011, Respondent discharged McMurray from its employ.

II. ISSUES AND CONTENTIONS

The issue is whether the Employer violated Sections 10(a)(2) and (1) of the Act when it allegedly terminated the Charging Parties in retaliation for their protected, concerted activity. The Charging Parties assert that the Employer retaliated against them for voicing their concerns about the quality of training they were receiving as trainees. Further, the Charging Parties assert

that Charging Party Maliongas was retaliated against for inquiring about the treatment of McMurray when McMurray was in the hospital.

The Employer contends that the Charging Parties were terminated for their misuse of the state email usage policies and regulations. The Employer contends that the Charging Parties sent emails from their state email accounts for personal gain. The Employer asserts that the Charging Parties have not shown that they were engaged in protected, concerted activity or that there is a causal link between the alleged protected, concerted activity and their terminations. Finally, the Employer contends that it had a legitimate business reason to terminate the Charging Parties.

III. FACTS

Sheena L. McMurray and Annie Maliongas (Charging Parties) were hired as Disability Claims Adjudicator Trainees by the Department of Human Services' Rehabilitation Services Department, Disability Determination Services (DDS) Bureau (Employer or Respondent) for the Employer's September 2010 training class. After successfully completing the eighteen month class, trainees were promoted to the title of Disability Claims Adjudicator and remained in a probationary status for an additional four months. The title of Disability Claims Adjudicator Trainee is in the RC-62 bargaining unit represented by the American Federation of State, County and Municipal Employees. The Employer hired 31 trainees in total for the September 2010 class including Dena Whetstone and Wade Gadberry. Jessica Clem acted as supervisor of the DDS training unit from November 2009 through June 2012.

Employer Policies & Regulations

On or about September 16, 2010, the Charging Parties signed and acknowledged their review and understanding of various policies and regulations including the Employer's Computer and Safety Checklist, DDS Memorandum #1.5, and the Employee Handbook. The

Computer and Safety Checklist states that the employees "understand computer usage policy including internet and software/hardware usage – DDS Memo #1.5" and have "reviewed DDS guidelines for changing computer password, running queries, and email usage – DDS Memo #1.5." DDS Memo #1.5 states that email "is to be used for business-related reasons only," employees are not to "create or forward chain letters, mass emails or offensive emails," and "violation of any of these security guidelines or violations of any other restrictions as outlined in the DHS employee handbook are subject to discipline, up to and including discharge." Section V of the Employee Handbook states that the state email system is for "official DHS business only" and is "not to be used for personal messages or communications." Charging Parties were also provided with a "Security Guidelines" document by the Employer. This document instructs employees not to use their state email "even within the agency for personal use such as lunch dates, etc."

Meetings with Pratt

Rhonda Pratt has been the Division Administrator of DDS since January 2009. She has been employed in some capacity by the Employer for the past 31 years. Her job duties include administrative oversight of the quality assurance unit, fraud unit, training unit, and information systems.

In November 2010, Pratt spoke to the September 2010 training class regarding the trainees' progress in the class and their training test scores. She encouraged trainees to come forward to voice any concerns they had about the training they were receiving as Disability Claims Adjudicator Trainees. Pratt invited members of the training class to make an appointment with her to discuss any issues or concerns. The Charging Parties, Gadberry, and

Whetstone made appointments to meet with Pratt. Pratt then met individually with McMurray, Maliongas, Gadberry, and Whetstone on November 22, 2010.

During McMurray's meeting with Pratt, McMurray voiced her concern about her test scores and inquired about how she could do better in the training class. McMurray also mentioned that the medical exam administered by Dr. Hudspeth, a training class instructor, had been unfair because Hudspeth had not lectured on the material that was included in the test.

During Maliongas' meeting with Pratt, Maliongas discussed her concerns with the training unit. Maliongas mentioned that she felt Clem was belittling the trainees. Maliongas suggested that there were other trainees in the training class that felt the same way that Maliongas did. Pratt told Maliongas that "you can't speak for the trainees, you have to speak for yourself." Maliongas also stated that the environment in the training unit was hostile. After making this statement, Pratt stopped the meeting in order to have Ann Robert, Bureau Chief of DDS, present for the meeting. After reconvening, Robert and Pratt questioned Maliongas on what Maliongas meant by "hostile." Robert told Maliongas that the Employer takes the issue of a hostile work environment very seriously and that if Maliongas believed it to be a hostile work environment there were steps the Employer needed to take in order to investigate the allegations. After the meeting, Pratt did an investigation as to whether Maliongas' charges had any grounds and whether the entire class was being impacted by the issues Maliongas had raised.

During Gadberry's meeting with Pratt, Gadberry explained that the trainees were getting an "attitude" from Clem. He mentioned to Pratt that when the trainees would ask Clem questions, Clem would make snide remarks instead of answering their questions. Gadberry also stated to Pratt that the trainees felt silly and degraded when they asked questions.

Gadberry reports that after meeting with Pratt, he began to be treated differently. He stated that when he received reviews from Clem they were negative, despite the fact that other trainers were telling him that he was doing a good job. He reports that each time after he met with Clem, he "just walked out and felt like less of a person."

During Whetstone's meeting with Pratt, Whetstone told Pratt that the training unit was a hostile environment. Pratt then stopped the meeting to have Bureau Chief Robert join the meeting. After reconvening, Whetsone told Pratt and Robert that Clem was patronizing, condescending, and unfriendly. Whetstone told Pratt and Robert that she was speaking for others in the class. She mentioned that trainees were crying due to the hostile environment in the training unit.

Pratt testified at hearing that "it was loud and clear" from Maliongas, Gadberry, and Whetstone that each one of them "felt the conditions in the training unit were not acceptable."

Nishelle Walker-Campbell was also in the training class with the Charging Parties. She did not meet with Pratt. At hearing, she testified that she felt belittled and uncomfortable in the training class.

Sue Rempfer was a trainer in the training unit and also the acting AFSCME steward. She testified that the training atmosphere was not welcoming. She reports that at least half of the trainees came to her and expressed that they were feeling a lot of pressure in the class and were not sure how to handle that pressure.

As a result of the meetings with Pratt, the Employer examined how the medical section was being taught in the training unit and later restructured the training program so that Dr. Hudspeth no longer conducts trainings.

McMurray's Absence

On or about June 27, 2011, McMurray left work due to illness and was hospitalized. On June 28, 2011, she called into work to report that she would be absent and spoke with the Employer's timekeeper Kelly Anders. Anders told McMurray that she did not have any available sick time to use while she was off work. McMurray told Anders that she had vacation time available, and asked if she could use vacation time for her absence. Anders told McMurray that she could use vacation time.

On June 29, 2011, Maliongas texted McMurray to ask McMurray about her absence from work. McMurray told Maliongas that McMurray was in the hospital. Maliongas then told McMurray to make sure that McMurray called in to report her absence. McMurray responded that she had already called in and spoken with Anders. McMurray told Maliongas about her conversation with Anders and how she did not understand why Anders was concerned with whether McMurray would be using sick time or vacation time for her absence.

On or about June 30, 2011, Maliongas had a discussion with the Employer's timekeeper Anders about McMurray's absence. Maliongas asked Anders in a joking tone, "why are you being so mean to her?" Anders replied that he just had to tell McMurray about her time. Maliongas replied, "Kelly, she's already stressed out."

Later that day, Maliongas was called into Clem's office. Clem told Maliongas that Maliongas had already been told to not be a "spokesperson for the class." Maliongas replied that she had only been joking with Anders. Clem told Maliongas that Maliongas should not speak to the trainers that way.

Maliongas' Termination

Around 4:00p.m. on June 30, 2011, Clem told Maliongas to report to DDS Section Chief Barbara Morris' office. Morris, Robert, Clem, and AFSCME representative Sarah Guest were present. Robert told Maliongas that she was being terminated as of 5:00p.m. that day for violating the Employer's email policies by using the state email system for personal purposes, for selling items, and for including a link that directed recipients to a site off of the state network. Maliongas was shown a copy of the offending emails. The emails included a "Bigger Loser" email and a "Thirty-One" email sent from Maliongas' state email account.

The Biggest Loser email was sent on April 26, 2011, and stated, "It is only 8 weeks from today till the first day of Summer (June 21st), so for those of you who want to participate in the DCAT BIGGEST Loser. Come find me (cause you know I am a loser...ha). We will go 8 weeks till the first day of Summer! To get in it will be $5 donation and whoever Loses the MOST weight will get the cash."

The Thirty-One email was sent on June 28, 2011 at 4:23p.m., and advertised a Thirty-One party that Maliongas was hosting.[1] The text of the email includes details about Maliongas' sale of Thirty-One products and specials. It also included an external link to a website. The email stated in relevant part, "Will [sic] the last day I can take order for 31 (the purses and lunch totes and stuff) [sic] The sale runs thru the end of the month but I don't want to miss out. This month's special is spend $31 and you can get the LARGE Utility tote for only $9 (normally $30) if you want it embroidered the $6 can go toward the first $31 need so you would only have to spend $25 to get it, [sic] Awesome Christmas present for someone or for yourself!!! I have a catalog down here if you need to look at it or you can go on my nieces website and see it on line

[1] Thirty-One is a home party company where consultants sell items off a website or catalogue directly to customers or through a party host. Through sales, the consultants and host of the party receive compensation in the form of money, free, and/or discounted items.

(not from here, ha) www.mythirtyone.com/vlongstaff/ There is also a special for June it is pink with green handles!☺."

Among the recipients of the Thirty-One email were two Disability Claims Adjudicator Trainers, Patti Moffee and Ruth Kendall. After receipt of the Thirty-One email, Kendall notified Clem of the email. On June 30, 2011, Clem notified Section Chief Morris of the email. That same day, Morris then notified Bureau Chief Robert. After reviewing the Thirty-One email, Robert determined that it had been intended for personal gain. As a result, Robert instructed Systems Manager Matt Penning to review the email account of Maliongas as well as the email accounts of other employees who had corresponded with Maliongas by email. Robert then reviewed Maliongas' email with the agency's labor relations liaison and determined that some of the messages she had sent were in violation of the Employer's policies. Robert found that the most significant violation was the Thirty-One email because Maliongas was using her state email account to sell items for personal profit and had included an external link outside the state's firewall. Robert reports that as a result of this review, she scheduled the meeting with Maliongas for that same day.

After being presented with the email violation at the June 30, 2011 meeting, Maliongas responded that "everybody does it." Maliongas was told to "not worry about the rest of them, we're just looking at you." Maliongas admitted that she had sent the emails but stated that she should not be terminating for doing so.

At hearing, Robert reported that the decision to terminate Maliongas was made in consultation with the agency's labor relations liaison. Robert stated that Maliongas' work performance did not factor into her decision to terminate Maliongas. Robert explained that the email violation was serious enough to warrant termination because the Thirty-One email was for

personal profit and included an external link outside of the state's firewall. Maliongas had never received a warning or been disciplined for her email usage prior to her termination on June 30, 2011.

Review of Other Email Accounts

As a result of the review of email accounts associated with Maliongas's account, Robert discovered that two other employees had sent emails for personal gain in violation of the Employer's policies. One email was sent from McMurray and the other from Whetstone.

McMurray's Termination

On July 6, 2011, McMurray returned to work. Toward the end of the work day, McMurray received an email from Clem saying that Morris wanted to meet with her. That same day, Morris, Clem, Robert, and AFSCME representative Marcus Sherrod met with McMurray. Morris told McMurray that she was being terminated effective July 6, 2011, for sending an email from her state email account for personal gain. Morris told McMurray that the offending email had been sent by McMurray on May 12, 2011, regarding a daycare fundraiser. The email stated in relevant part, "I have the 'Enjoy the City' Coupon books for sale as a fundraiser for SilverLeaf Daycare. The books are $20.00 but the savings you get back goes beyond that! I will have the book on the table by the center printer (by Jeanette) so you can see what it looks like, and if you want to purchase one just sign your name on the sheet. (I can't give you that book though!) The money is due when you place your order. You will get your book back in about a week or less." The email had been sent to 22 other DHS employees from McMurray's state email account.

In response to the allegations, McMurray responded that "everyone sends emails." McMurray stated that she was not receiving a profit from the books. McMurray stated that her sister working at Silver Leaf at the time McMurray sent the email and McMurray was selling the

books for her. McMurray also noted that her son was not attending the daycare. Morris responded that it "looks like you were sending an email for personal gain so we're going to have to let you go." McMurray had never received a warning or been disciplined for email usage prior to her termination on July 6, 2011.

At hearing, Robert stated that she had made the decision to terminate McMurray in consultation with labor relations. Robert stated that McMurray's work performance did not factor into the decision.

Gadberry

On November 15, 2010, Gadberry sent an email from his state email account asking for donations for a family whose house had been flooded. The email stated in relevant part, "I hope that you all can find it in your heart over the next few days to bring in a food item that will help them have a happier Thanksgiving. There is a box in my cube/cell. Feel free to drop by and drop something off. Anything will help." Gadberry asked permission from either Rempfer or Clem before sending the email and was granted permission. Gadberry was told that the message had to be cleared with Clem before he could send it. Gadberry was not disciplined for sending the email.

In October 2011, the Employer told Gadberry that his numbers were not "up to par "and that he was not doing the work he needed to do. Gadberry was informed that he had the choice of resigning or being terminated. Gadberry resigned in October 2011.

Whetstone

On July 8, 2011, Whetstone attended a pre-disciplinary meeting with Morris regarding an email Whetstone had sent that was in violation of the Employer's policies. AFSCME representative Sue Rempfer was also present for the meeting. Whetsone had sent an email using

her state email account to announce a Lia Sophia party that she was hosting.[2] Whetstone was issued a two-day suspension for sending the email.

AFSCME filed a grievance over the two-day suspension. The discipline was then reduced at the third step of the parties' grievance procedure to a one-day suspension.[3]

Other Emails

On October 15, 2010, Morris sent an email from her state email account thanking the training class for sending her flowers for bosses' day.

On November 15, 2010, Alicia Jeannette White, a trainee in the training class, sent an email from her state email account which stated, "I am collecting bags for a food pantry. My neighbor's family runs one in Lincoln and they never have enough bags. Any you can bring me will help them greatly." White was not disciplined for sending this email.

On February 18, 2011, Melissa Bringle, a trainee in the training class, sent an email from her state email account which stated, "I would just like to tell everyone thank you for the shower and the nice gifts. It was very thoughtful and all the gifts were very nice. Once again thank you-Missy and baby Bringle." Bringle was not disciplined for sending this email.

On April 14, 2011, Whitney Duckels, a trainee in the training class, sent an email from her state email account which stated, "On Monday after work some of us were planning on going to Osaka Hibachi Grill for dinner and drinks. It is located on Wabash avenue across from the new Dairy Queen. We need to make reservations. Please let me know if you would like to attend, reservations will be made at 5:30 for dinner/drinks." Duckels was not disciplined for sending this email.

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[2] Lia Sophia is a company where consultants sell items to customers through a party host. Through sales, the party host receive compensation in the form of discounts and free products.

[3] As a certified employee, Whetstone was covered by the collective bargaining agreement's grievance procedure. As probationary employees, the Charging Parties were not covered by the grievance procedure.

IV. DISCUSSION AND ANALYSIS

The Employer did not violate Sections 10(a)(2) and (1) when it terminated the Charging Parties.

Section 10(a)(1) of the Act prohibits an employer or its agents from interfering with, restraining, or coercing employees for exercising their rights guaranteed under the Act.[4] Section 10(a)(1) does not generally require proof of illegal motive, however where an employee alleges that it suffered an adverse employment action in retaliation for engaging in protected activity, the motivation of the employer must be examined using the framework applied in Section 10(a)(2) claims. Pace Suburban Bus Div. v. Ill. Labor Relations Bd., State Panel, 406 Ill. App. 3d 484, 494-95 (1st Dist. 2010); State of Ill., Dep't of Central Mgmt. Servs. (State Police), 30 PERI ¶ 70 (IL LRB-SP 2013). To establish a prima facie case, a charging party must show by a preponderance of the evidence that (1) an employee engaged protected, concerted activity; (2) the respondent had knowledge of such activity; (3) the respondent took an adverse employment action against the employee; and (4) the employee's protected conduct was a substantial or

[4] Section 10 of the Act states in relevant part:

> (a) It shall be an unfair labor practice for an employer or its agents:
> (1) to interfere with, restrain or coerce public employees in the exercise of the rights guaranteed in this Act or to dominate or interfere with the formation; existence or administration of any labor organization or contribute financial or other support to it; provided, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;
> (2) to discriminate in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in or other support for any labor organization. Nothing in this Act or any other law precludes a public employer from making an agreement with a labor organization to require as a condition of employment the payment of a fair share under paragraph (e) of Section 6;

motivating factor in the adverse action. City of Burbank v. Ill. State Labor Relations Bd., 128 Ill.2d 335, 345 (1989).

A. Protected, Concerted Activity

"Concerted activity" is activity undertaken jointly by two or more employees, or by one employee on behalf of others. Cnty. of Cook (Mgmt. Info. Servs.), 11 PERI ¶ 3012 (IL LLRB 1995). To be protected, concerted activity must be for the purposes of collective bargaining, "other mutual aid or protection," or aimed at improving the wages, terms, and conditions of employment. Id. Public sector labor agencies generally take a broad view as to what constitutes protected activity. Vill . of New Athens, 29 PERI ¶ 27 (IL LRB-SP 2012), Cnty. of Cook, 27 PERI ¶ 57 (IL LRB-SP 2011); Vill. of Bensenville, 10 PERI ¶ 2009 (IL SLRB 1993). "Where it can be shown that the complained-of employer actions directly affect their working conditions, employees are permitted a wide range of protest." Vill. of Bensenville, 10 PERI ¶ 2009.

Here, the Charging Parties were engaged in protected, concerted activity when they voiced their concerns about the training class to Pratt. McMurray complained about the test administered by Dr. Hudspeth. Maliongas complained about Clem's treatment of the trainees and the working environment. The Charging Parties both acted individually on behalf of the other trainees. The Charging Parties' complaints were aimed at improving the conditions of employment for the trainees. Thus, the Charging Parties were engaged in concerted, protected activity when they complained about the conditions in the training class to Pratt.

In addition, Charging Party Maliongas was engaged in concerted, protected activity when she voiced her concerns regarding the treatment of McMurray. Maliongas spoke on behalf of McMurray when she complained to Anders about the treatment of McMurray while McMurray was absent. Maliongas' statement to Anders was for "other mutual aid or protection." Thus,

Maliongas was engaged in concerted, protected activity when she complained about the treatment of McMurray.

The Charging Parties have also met the second and third prongs of their prima facie case. The Employer had knowledge of their protected, concerted activity because the Charging Parties complained directly to Pratt regarding their concerns about the training unit, and Robert was present for Maliongas' meeting with Pratt. In addition, the Employer had knowledge of Maliongas' complaints to Anders because Clem admonished Maliongas specifically for voicing her complaints regarding the treatment of McMurray. The Employer took an adverse employment action against the Charging Parties because they were terminated. Thus, the only remaining element of the prima facie case is whether the Charging Parties' protected, concerted activity was a substantial or motivating factor in their terminations.

B. Unlawful Motive

The Charging Parties' protected, concerted activity was not a substantial or motivating factor in their terminations.

An employer's unlawful motive may be inferred by direct or circumstantial evidence, including proximity in time between the protected, concerted activity and the adverse action; hostility toward protected, concerted activities; disparate treatment toward employees engaged in protected, concerted activities; and shifting or inconsistent explanations for the adverse action. City of Burbank, 128 Ill. 2d at 345-46.

1. Proximity in Time

The Charging Parties' discussions with Pratt occurred on November 22, 2010. Maliongas spoke with Anders regarding the treatment of McMurray on June 30, 2011. Maliongas was terminated on June 30, 2011. McMurray was terminated on July 6, 2011. Thus, McMurray's

protected, concerted activity occurred about seven months prior to her termination. Maliongas' discussion with Pratt occurred about seven months prior to her termination, while her discussion with Anders occurred on the same day as her termination. Thus, the timing of Maliongas' termination supports an inference that the Employer's motives were unlawful. However, timing alone, without supporting proof to suggest that a respondent acted with unlawful motivation, is insufficient to establish a violation of the Act. Village of McCook, 25 PERI ¶ 75 (IL LRB-SP 2009); Ill. Dep't of Cent. Mgmt. Servs. (Dep't of Corrections), 18 PERI ¶ 2059 (IL LRB-SP 2002); City of Chi. (Dep't of Streets & Sanitation), 6 PERI ¶ 3020 (IL LLRB 1990).

2. Expressed Hostility

The Employer expressed hostility toward Maliongas' protected, concerted activity. During Pratt's meeting with Maliongas on November 22, 2010, Pratt told Maliongas that "you can't speak for the trainees, you have to speak for yourself." In addition, on June 30, 2011, Clem stated that Maliongas had already been told to not be a "spokesperson for the class" and should not speak to the trainers that way.

3. Disparate Treatment & Shifting Explanations

The record does not indicate that the Employer treated the Charging Parties differently than other employees not engaged in protected, concerted activity or that the Employer had shifting or inconsistent explanations for their terminations. The Charging Parties assert that other employees violated the Employer's email policies and regulations but were not disciplined. However, the examples of emails provided by the Charging Parties are not comparable to the emails sent by the Charging Parties because those emails did not seek to solicit funds for personal gain. The email sent from Gadberry solicited donations for a family whose house had been flooded. The email sent from White solicited donations for a food pantry. The email sent

from Morris thanked employees for sending flowers. The email sent from Bringle thanked employees for a baby shower and gift. Finally, the email from Duckels was an invitation for dinner and drinks. Thus, the examples provided by the Charging Parties are incomparable and insufficient to show that the Employer treated Charging Parties differently. In fact, the email sent from Gadberry tends to show that the Charging Parties' were not treated differently because of their protected, concerted activity since Gadberry had also complained to Pratt about the training class in November 2010, and was not disciplined for sending this email. Further, the email sent from Whetstone was comparable to the emails sent by the Charging Parties, and Whetstone was disciplined for sending the email.

The Charging Parties have not presented sufficient evidence that the Employer shifted its explanation or provided inconsistent reasons for their terminations. On the dates the Charging Parties were terminated, they were told that they were being terminated for violating the Employer's email policies. The Employer's reason for the Charging Parties' terminations have remained consistent. Thus, the Charging Parties have not met their prima facie case.

4. Legitimate Reason

Assuming however that the Charging Parties had established a prima facie case, the Employer has shown that it had a legitimate reason for terminating the Charging Parties and that it would have done so notwithstanding their protected, concerted activity.

If a charging party establishes its prima facie case, the burden shifts to the respondent to demonstrate by a preponderance of the evidence that it had a legitimate reason for the adverse employment action and that it would have taken the same action notwithstanding the respondent's unlawful motive. City of Burbank, 128 Ill. 2d at 346. However, merely proffering a legitimate business reason for the adverse action will not satisfy a respondent's burden. Id. It

must also be determined whether the employer's reasons are bona-fide or pretextual. Id. If the reasons offered are a mere litigation figment or were not relied upon, then the reasons offered will be determined to be pretext and the inquiry is over. Id.

Here, the Employer provided evidence that it had a legitimate reason for terminating the Charging Parties because they had violated the Employer's email policy by sending personal emails from their state account that were for personal gain. Thus, even if the Charging Parties had established a prima facie case, the Employer has shown that it had a legitimate reason for terminating the Charging Parties and would have done so regardless of the Charging Parties' protected, concerted activity.

V. CONCLUSION OF LAW

Respondent, State of Illinois, Department of Human Services did not violate Sections 10(a)(2) and (1) of the Act, when it terminated the Charging Parties.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that that the complaints be dismissed in their entirety.

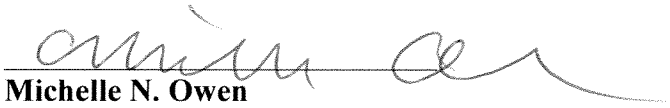
VII. EXCEPTIONS

Pursuant 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

Board's General Counsel at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. The exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the 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 on this 5th day of June, 2014.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL



Michelle N. Owen
Administrative Law Judge