

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Patrick C. Nickerson,)	
)	
Charging Party)	
)	
and)	Case No. S-CA-12-011
)	
Village of University Park,)	
)	
Respondent)	

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

On January 10, 2012, Executive Director John F. Brosnan dismissed the unfair labor practice charge filed by Patrick C. Nickerson (Charging Party) in the above-captioned case. The Charging Party alleged that the Village of University Park (Respondent) engaged in unfair labor practices within the meaning of Section 10(a) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), as amended (Act), when Respondent terminated his employment.

The Charging Party filed a timely appeal of the Executive Director's Dismissal pursuant to Section 1200.135(a) of the Board's Rules and Regulations, 80 Ill. Admin. Code §1200.135(a). The Respondent filed no response. After reviewing the record and appeal, we reverse the Executive Director's Dismissal and remand for further investigation.

Charging Party was discharged on February 23, 2011, by means of a letter from Respondent indicating that he had failed to provide evidence he would be able to use Respondent's vehicles as required for his position. Charging Party alleged that other employees of Respondent lacked driver's licenses, and he was actually discharged because he had complained about a loss of sick and vacation time in 2008 or 2009 and in 2009 had testified for

and otherwise assisted a co-worker who had filed charges with the Board, the Equal Opportunity Commission, and the Illinois Human Rights Department.

The Executive Director dismissed the charge, finding the lapse in time between Charging Party's alleged 2009 activities and his 2011 discharge eliminated the likelihood of proving a causal connection between Charging Party's alleged protected activity and the adverse employment activity taken against him. He explained that, while proof of illegal motivation is generally unnecessary in establishing a violation of Section 10(a)(1) of the Act, it is required where it is alleged an employer's conduct was undertaken in retaliation for an employee having engaged in conduct protected under the Act. Under that circumstance, the analysis must track that used under Section 10(a)(2), i.e., a charging party must be able to demonstrate that: (1) he engaged in protected activity; (2) the respondent knew of that activity; and (3) the respondent took adverse action against charging party because of that activity. Pace Suburban Bus Div. of Reg'l Transp. Auth. v. Ill. Labor Relations Bd., 406 Ill. App. 3d 484, 494-97 (1st Dist. 2010).

The last element of this test can be inferred from a variety of factors, including proximity in time between an employee's protected activities and the subsequent adverse employment action, and more favorable treatment of similarly situated employees who did not engage in protected activities, City of Burbank v. Ill. State Labor Relations Bd., 128 Ill. 2d 335, 349 (1989). The Executive Director found that inference could not be drawn here.¹ In addition to the temporal gap between the purported 2009 protected activity and the 2011 discharge, the

¹ The Executive Director noted that Charging Party had been unable to supply to the Board agent investigating his charge the name of the co-worker he purportedly assisted, and that the Board agent could not find evidence of charges filed by any of Respondent's employees in 2009 as alleged in the charge. He stated these circumstances cast doubt on Nickerson's assertions, but the basis for the Executive Director's dismissal was not an inability by Nickerson to demonstrate he had engaged in protected activities, but an inability to demonstrate a causal connection between that alleged activity and his discharge.

Executive Director found no evidence that Respondent had applied its workplace standards more stringently on Nickerson than on other similarly situated employees.

Nickerson successfully demonstrates that a premise for the Executive Director's dismissal was in error. In his appeal, he provides several agency case numbers, including those for two charges filed by a co-worker named Thaddeus Lis with the Illinois Department of Human Rights.² Those charges were filed in January 2010. Consequently, any testimony or other verbal information that Nickerson might have provided to the Department of Human Rights or the Human Rights Commission in relation to the investigation or the adjudication of those charges would not have occurred in 2009, as Nickerson stated in his charge, but rather in 2010 or 2011, and possibly toward the end of 2010 or early 2011, very near the time of Nickerson's February 2011 discharge.

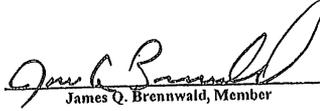
Because, contrary to the Executive Director's assumption, Nickerson's discharge may have closely followed his alleged engagement in protected activity, we reverse the dismissal and remand for further investigation. We also note that Nickerson's ability to demonstrate disparate treatment has not been foreclosed: Nickerson states in his appeal that two of Respondent's employees who were hired at the same time he was hired, Zischaun Jenkins and Steve Allen, lack driver's licenses. Whether they were similarly situated to Nickerson, yet better treated, should also be considered during the investigation.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

² A third case number provided by Nickerson is his own charge filed after his termination. It obviously could not have served as motivation for Respondent's decision to terminate his employment.


Jacalyne J. Zimmerman, Chairman


Paul S. Besson, Member


James Q. Brennwald, Member


Michael G. Coli, Member


Albert Washington, Member

Decision made at the State Panel's public meeting in Chicago, Illinois, on May 15, 2012; written decision issued at Chicago, Illinois, May 29, 2012.

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AFFIDAVIT OF SERVICE

I, Elaine Tarver, on oath state that I have this 29th day of May 2012, served the attached **BOARD DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD STATE PANEL** issued in the above-captioned case on each of the parties listed herein below by depositing, before 5:00 p.m., copies thereof in the United States mail at 100 W Randolph Street, Chicago, Illinois, addressed as indicated and with postage prepaid for first class mail.

Patrick Nickerson
7745 Sunset Court
University Park, Illinois 60484

Vivian Covington
Mayor of University Park
698 Burnham Drive
University Park, Illinois 60466-2708



SUBSCRIBED and SWORN to
before me this 29th day
of May, 2012.



NOTARY PUBLIC

