

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

International Brotherhood of Teamsters,	)	
Local 700,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. S-CA-12-076
	)	
State of Illinois, Department of Central	)	
Management Services,	)	
	)	
Respondent	)	

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

On January 5, 2012, Executive Director John F. Brosnan dismissed the unfair labor practice charge filed by the International Brotherhood of Teamsters, Local 700 (Charging Party) in the above-captioned case. The Charging Party alleged that the State of Illinois, Department of Central Management Services (Respondent) violated Section 10(a)(1) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), as amended (Act),<sup>1</sup> by failing to provide bargaining unit member Master Sergeant Beliveau with union representation at an interview as he had requested. The Executive Director dismissed the charge, finding Beliveau had no right to the presence of a union representative under NLRB v. Weingarten, 420 U.S. 251 (1975), and its progeny because Beliveau lacked a reasonable expectation that he might be disciplined.

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<sup>1</sup> Section 10(a)(1) provide that

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[.]

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, Parts 1200 through 1240. Respondent did not file a response. After reviewing the record and the appeal, we reverse the Executive Director's dismissal and direct that a complaint for hearing be issued for the following reasons.

The right of Illinois public employees to union representation in meetings that might reasonably result in disciplinary action is well established. 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), but 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 (IL LRB-SP 2005); 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 (IL SLRB 1985). At issue is the second requirement: whether Beliveau reasonably believed he might be subject to discipline.

The standard for determining whether an employee reasonably expects discipline is objective, measured in light of all the circumstances of the case. 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 (IL SLRB 1988). The National Labor Relations Board has held that an Employer's

statement to an interviewee that he will not receive discipline as a result of the information obtained in the interview dispels an employee's reasonable belief of potential discipline. 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 advice that no disciplinary action would occur as result of meeting effectively dissipated any reasonable grounds to fear disciplinary action); U.S. Postal Service, 283 NLRB 8 (1987) (no reasonable expectation of discipline where supervisor gave unrefuted testimony that he told employee the interview would not result in discipline). However, in an opinion consistent with those NLRB cases, we have held that an employee may maintain a reasonable expectation of discipline where the employer merely assures him that he is *not the subject of the investigation*. City of Ottawa, 25 PERI ¶43 (IL LRB-SP 2009), rev'd in part on other grounds in non-precedential decision, City of Ottawa v. Ill. Labor Relations Bd., No. 3-09-0365, 27 PERI ¶39 (Ill. App. Ct., 3d Dist., Jan. 6, 2011). The exact line establishing when an employee has, or lacks, a reasonable expectation that discipline may be imposed lies somewhere between these two sets of examples, and unless Beliveau's situation is a close match with one of these holdings, this case presents a question of law we have not previously addressed.

The investigatory record does not clearly indicate the exact situation facing Beliveau. The Executive Director's finding that Beliveau lacked a reasonable expectation that he might be disciplined as a result of the investigation was based on the factual assumptions that Respondent's investigator had assured Beliveau that Respondent would not bring failure to supervise charges against him, that he was not the focus of the investigation, and that the

Respondent had further assured the union that Beliveau would not be disciplined as a result of the interview.

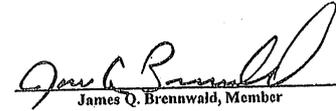
However, there is conflicting evidence on these points. During the incident under investigation, Beliveau was present at a time his subordinates struggled to subdue an arrestee, and the code of conduct provides that sergeants may be disciplined for the job performance of their subordinates where they are "aware or reasonably should have been aware of the failure or the potential for failure [of the subordinate] and did not take the appropriate action to correct the deficiency." When, prior to the interview of Beliveau, a union steward inquired about the chances Beliveau might be disciplined, the Respondent's investigator stated "that's always a possibility" but added a union representative was not needed since the meeting was "only a witness interview." Charging Party asserts that, when he asked for representation at the interview, he was given no assurances that anything he said would not be used in subsequent discipline against him. Respondent, on the other hand, asserts Beliveau was told he was "not the focus of the investigation" and the Respondent "was not looking at charges against him for failing to supervise."

We find there is an issue of fact as to the exact nature of the assurances Respondent gave Beliveau, and that, even if Respondent's version of what transpired were ultimately credited, an issue of law as to whether the assurance was sufficient to dispel a reasonable belief of exposure to discipline. For these reasons, we reverse the dismissal of the charge and direct that a complaint for hearing issue alleging a violation of Section 10(a)(1) of the Act.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

  
Jacalyn J. Zimmerman, Chairman

  
Paul S. Besson, Member

  
James Q. Brennwald, Member

  
Michael G. Coll, Member

  
Albert Washington, Member

Decision made at the State Panel's public meeting in Chicago, Illinois, on April 12, 2012; written decision issued at Chicago, Illinois, May 1, 2012.

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AFFIDAVIT OF SERVICE

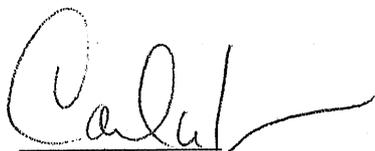
I, Elaine Tarver, on oath state that I have this 1st day of May 2012, served the attached **DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD STATE PANEL** issued in the above-captioned case on each of the parties listed herein below by depositing, before 5:00 p.m., copies thereof in the United States mail at 100 W Randolph Street, Chicago, Illinois, addressed as indicated and with postage prepaid for first class mail.

Chris Schneider  
Teamsters Local 700  
1300 Higgins Road, Suite 301  
Park Ridge, IL 60068

Stephanie Shallenberger  
CMS  
501 Stratton Office Building  
Springfield, IL 62706



SUBSCRIBED and SWORN to  
before me this 1st day  
of May, 2012.

  
NOTARY PUBLIC

