STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Susan Gruberman,	)	
	)	
Charging Party	)	
	)	
and	)	Case Nos. S-CA-12-088
	)	
St. Clair Township,	)	
	)	
Respondent	)	

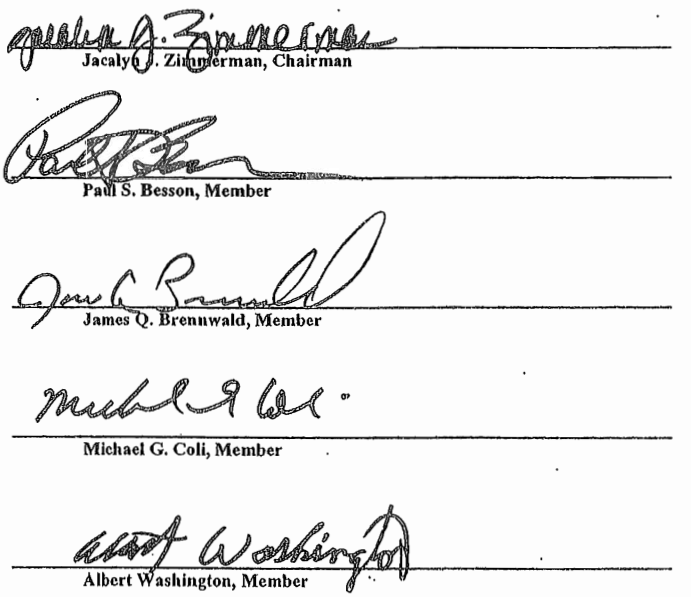
DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD STATE PANEL

On February 2, 2012, Executive Director John F. Brosnan issued an order dismissing the unfair labor practice charge filed by Susan Gruberman (Charging Party) in the above-captioned case. The Charging Party alleged that St. Clair Township (Respondent) engaged in unfair labor practices within the meaning of Section 10(a) of the Illinois Public Labor Relations Act, 5 ILCS 315/10(a) (2010). On February 15, 2012, Charging Party filed a timely appeal of the Executive Director's dismissal pursuant to Section 1200.135 of the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code §1200.135, and the Respondent filed a timely response.

After reviewing the record, the appeal and the response, we reverse the Executive Director's order dismissing the charge and remand for the issuance of a complaint for hearing. Charging Party alleged that, in fear that layoffs might be discussed, she attended one public meeting of the township board, and that she attended a second such meeting and there made a public comment regarding a proposed change to the employee dress code. She alleges that her superior made disparaging comments to her after each occasion, the second time suggesting she

had been insubordinate. The Executive Director properly noted that whether such comments had the effect of coercing, restraining or interfering with activity protected by the Act depends upon whether a reasonable employee would have viewed the comments as conveying a promise of benefit or a threat of reprisal or force, City of Mattoon, 1 PER ¶2016 (IL SLRB) 1995); City of Chicago (Dep't of Health), 10 PERI ¶3031 (IL LLRB 1994); Green & Warns & City of Chicago, 3 PERI ¶3011 (IL LLRB 1987); Gale & Chicago Housing Auth., 1 PER ¶3010 (IL LLRB 1985), but we find that calling an employee insubordinate often creates the impression of a threat in a reasonable employee. Consequently, we remand this matter for issuance of a complaint and a hearing to examine whether the Respondent, through its agent, had coerced, restrained or interfered with activity protected under 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. Coli, Member

Albert Washington, Member

Decision made at the State Panel's public meeting in Chicago, Illinois, on June 12, 2012, written decision issued at Chicago, Illinois, August 10, 2012.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Susan Gruberman,	)	
Charging Party	)	
and	)	Case No. S-CA-12-088
St. Clair Township,	)	
Respondent	)	

DISMISSAL

On October 18, 2011, Charging Party, Susan Gruberman, filed a charge with the State Panel of the Illinois Labor Relations Board (Board) in the above-captioned case, alleging that Respondent, St. Clair Township, violated Section 10(a) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2010), *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 set forth below.

I. INVESTIGATORY FACTS AND THE PARTIES' POSITIONS

Respondent is a public employer within the meaning of Section 3(o) of the Act and subject to the jurisdiction of the State Panel of the Board pursuant to Sections 5(a-5) and 20(b) of the Act. At all times material, Gruberman was a public employee within the meaning of Section 3(n) of the Act, employed by Respondent in the title or classification of Accountant, in its Clerical Department. International Union of Operating Engineers, Local 148 (Local 148 or Union), is a labor organization within the meaning of Section 3(i) of the Act, and the exclusive representative of a bargaining unit comprised of all Township employees in its Clerical and Sewer Departments, as certified by the Board on May 8, 2009, in Case No. S-VR-09-008. At all times material, Gruberman was a member of Local 148's bargaining unit.

In June 2011, Gruberman attended a Township board meeting, having seen the topic "personnel" listed on its agenda. She was concerned, thinking perhaps that the Township might authorize a layoff. The next day, Gruberman contends that the Township supervisor, Tim Buchanan, told her that if she attended the meeting because "personnel" was a topic on the agenda, she need not attend future such meetings, as henceforth, the topic would be listed on every meeting agenda. Respondent denied that Buchanan told Gruberman that she need not attend Township meetings in the future, but admits that he explained to

Gruberman that the topic would be listed on future meeting agendas, as it allowed Township representatives flexibility if they had questions about, or wished to discuss, personnel matters.

In August 2011, Gruberman again attended a Township board meeting. During the public comment portion, Gruberman asked questions about the employee dress code policy. The next morning, Buchanan called her into his office and told her he thought it inappropriate for her to raise the employee dress code policy at a public meeting, as neither she, nor any other Township employee, saw fit to respond to his two earlier emails seeing input regarding that policy. Gruberman contends that Buchanan then told her that her conduct at the Township meeting was "immoral, unethical, unprofessional, and insubordinate." Buchanan denied making the statement Gruberman attributed to him, but admitted that said to her that he thought her actions at the meeting bordered on insubordination. It is undisputed, however, that later that same day, Buchanan apologized for telling her it was inappropriate for her raise the employee dress code policy at a public meeting, and assured her that she had the right to attend and speak at Township meetings whenever, and about whatever topic, she wished. Respondent did not discipline, or otherwise take adverse action, against Gruberman in connection with the foregoing.

Herein, Gruberman contends that the Township violated the Act in that it interfered with her right to engage in protected concerted activities. The Township denies it violated the Act, contending that Gruberman's activity was neither protected, nor concerted.

II. DISCUSSION AND ANALYSIS

Under Section 6 of the Act, public employees are guaranteed "the right of self-organization, [the right to] form, join or assist any labor organization, [and the right] to bargain collectively through representatives of their own choosing on questions of wages, hours and other conditions of employment." Section 10(a)(1) of the Act makes it an unfair labor practice for an employer or its agents to interfere with, restrain or coerce public employees in the exercise of their Section 6 rights. The Board has long held that cases involving a threat must be resolved by evaluating whether the conduct at issue, when viewed objectively from the standpoint of an employee, would reasonably have had the effect of coercing, restraining or interfering with the exercise of protected rights. Green and Warns and City of Chicago, 3 PERI ¶ 3011 (IL LLRB 1987); Gale and Chicago Housing Authority, 1 PERI ¶ 3010 (IL LLRB 1985).[1] In such cases, proof of illegal motivation is not required to show a violation of Section 10(a)(1). Id.

[1]Accord NLRB v. Acme Die Casting Corp., 728 F.2d 959 (7th Cir. 1984); Spartan Plastics, 269 NLRB 546 (1984); Wright Line, Inc., 251 NLRB 1083 (1980) enf'd, 662 F.2d 899 (1st Cir. 1981), cert. den. 455 U.S. 989, approved by the Supreme Court in NLRB v. Transportation Management Corp., 462 U.S. 393 (1983); Russell Stover Candies, Inc. v. NLRB, 551 F.2d 204 (8th Cir. 1977); Pennsylvania Department of Labor and Industry, 16 PPER 16091 (Penn. PLRB 1985); Hillsborough County, 11 FPER 16227 (Fla. PERC 1985); City of Mount Vernon, 12 PERC 3108 (N.Y. PERB 1979).

Consistent therewith, pursuant to the protected speech provision in Section 10(c) of the Act, an employer's statements do not violate Section 10(a)(1) unless a reasonable employee would view the statements as conveying a promise of benefit or threat of reprisal or force.[2] City of Mattoon, 11 PERI ¶2016 (IL SLRB 1995); City of Chicago (Department of Health), 10 PERI ¶3031 (IL LLRB 1994). Correspondingly, charging party need not make any showing that employees were in fact coerced, restrained, or interfered with, or that respondent had a "bad" motive. Elk Grove Village Firefighters Association/Village of Elk Grove Village, 10 PERI ¶2001 (IL SLRB 1993)(wherein the Board found a violation of Section 10(a)(1) despite the fact respondent acted in good faith and on the advice of counsel, as the unfair labor practice did not turn on respondent's motive, it was of no consequence that it was mistaken or that it acted upon the advice of legal counsel, citing Florida Steel Corporation, 220 NLRB 1201, 1203 (1975), enf'd, 538 F.2d 324 (4th Cir. 1976)).[3]

Thus, the issue in the instant matter is whether a reasonable employee in Gruberman's circumstances would view Buchanan's complained-of statements as conveying a promise of benefit or threat of reprisal or force. As to the June 2011 statement, Gruberman contends that Buchanan told her that if she attended the Township meeting because "personnel" was a topic on the agenda, she need not attend future such meetings, as henceforth, the topic would be listed on every meeting agenda. Buchanan denied he told Gruberman that she need not attend Township meetings in the future, but admitted that he explained to her that the topic would be listed on future meeting agendas, as it allowed Township representatives flexibility if they had questions about, or wished to discuss, personnel matters. In fact, Gruberman had attended the meeting because "personnel" was a new topic on the agenda, and she was concerned about layoffs. Buchanan's June 2011 response, even if he made the statement Gruberman attributed to him, did not convey a threat of reprisal or force, especially in light of his explanation to her, and therefore, Respondent did not thereby violate the Act.

In August 2011, there is no dispute that Buchanan told Gruberman that he thought that her conduct at the meeting, asking questions about the employee dress code policy, was insubordinate. Given that he

---

[2]Section 10(c) of the Act provides in pertinent part that "the expressing of any views, argument, or opinion or the dissemination thereof...shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit." Movie Star, 361 F.2d 346, 62 LRRM 2234 (5th Cir. 1966)(wherein the court denied enforcement of an NLRB order finding a violation of Section 8(a)(5), holding that the employer's noncoercive, informational letter was privileged under Section 8(c) of the NLRA, from which the language in Section 10(c) of the Illinois Public Labor Relations Act was derived).

[3] It is too well settled to brook dispute that the test of interference, restraint, and coercion under Section 8(a)(1)...does not depend on an employer's motive nor on the successful effect of the coercion. Rather, the illegality of an employer's conduct is determined by whether the conduct may reasonably be said to have a tendency to interfere with the free exercise of employee rights under the [NLRA].

El Rancho Market, 235 NLRB 468, 471, 98 LRRM 1153 (1978), citing American Freightways Co., 124 NLRB 146, 44 LRRM 1302 (1959).

solicited input from the Township's employees on this very issue and received no response, his frustration, under the circumstances is understandable. Buchannan expressed an opinion that Gruberman disagreed with, but a reasonable employee in her circumstances would not view as conveying a threat of reprisal or force. Buchanan's subsequent apology underscores that he expressed an intemperate opinion, but nothing that a reasonable employee would view as conveying a threat of reprisal or force.

III. ORDER

Accordingly, the instant charge is hereby dismissed. Charging Party may appeal this dismissal to the Board at any time within 10 calendar days of service hereof. Any such appeal must be in writing, contain the case caption and number, and be addressed to the Board's General Counsel, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103. Appeals will not be accepted in the Board's Springfield office. In addition, any such appeal must contain detailed reasons in support thereof, and the party filing the appeal must provide a copy of its appeal to all other persons or organizations involved in this case at the same time the appeal 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 a copy of the appeal has been provided to each of them. An appeal filed without such a statement and verification will not be considered. If no appeal is received within the time specified herein, this dismissal will become final.

Issued in Springfield, Illinois, this 2nd day of February, 2012.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

John F. Brosnan
Executive Director