STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

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| Geraldine Armstrong, | ) | |
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| Charging Party | ) | |
| | ) | |
| and | ) | Case No. S-CA-12-135 |
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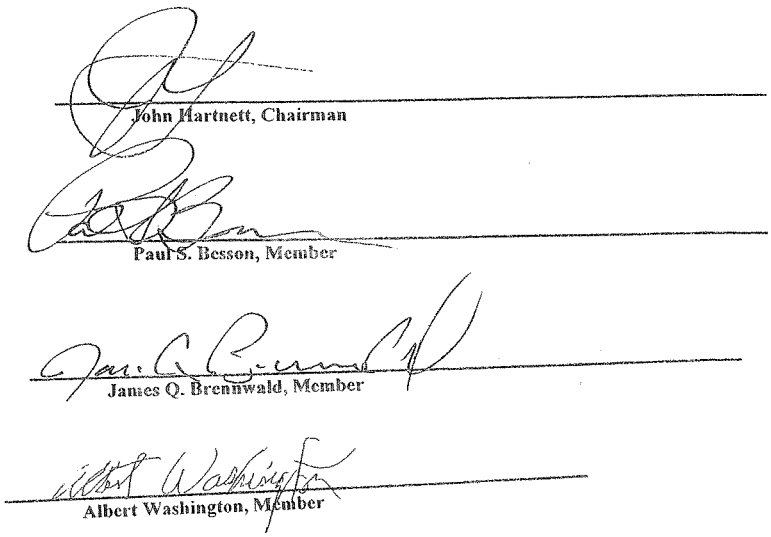
| Village of Maywood (Police Department), | ) | |
| | ) | |
| Respondent | ) | |

## DECISION AND ORDER OF THE ILLIINOIS LABOR RELATIONS BOARD STATE PANEL

On August 8, 2012, Executive Director Melissa Mlynski dismissed the unfair labor practice charge filed by Geraldine Armstrong (Charging Party) in the above-captioned case. The Charging Party alleged that the Village of Maywood (Police Department) (Respondent) engaged in unfair labor practices within the meaning of Sections 10(a)(1), (2), and (3) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), as amended, when the Charging Party's supervisor made certain comments and body gestures after being presented with the Charging Party's grievance, and when Respondent disciplined the Charging Party after she attended a negotiation session.

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 Part 1200.135(a). Respondent did not file a response. After reviewing the record and appeal, we uphold the Executive Director's Dismissal for the reasons articulated in that document.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD[1]




Decision made at the Board's public meeting in Chicago, Illinois on January 8, 2013, written decision issued in Chicago, Illinois on January 28, 2013.

[1] Member Coli did not participate in the determination of this case.

# STATE OF ILLINOIS
# ILLINOIS LABOR RELATIONS BOARD
# STATE PANEL

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| Geraldine Armstrong,<br>Charging Party<br>and<br>Village of Maywood (Police Department),<br>Respondent | Case No. S-CA-12-135 |

## DISMISSAL

On March 22, 2012, Charging Party, Geraldine Armstrong, filed a charge with the State Panel of the Illinois Labor Relations Board (Board) in the above-captioned case, alleging that Respondent, Village of Maywood (Respondent or Employer), violated Section 10(a)(3), (2) and (1) 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 CHARGING PARTY'S POSITION

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 Section 5(a-5) of the Act. At all times material, Armstrong was a public employee within the meaning of Section 3(n) of the Act, employed by Respondent in the title or classification of Records Supervisor. Service Employee International Union, Local 73 (SEIU or Union), is a labor organization within the meaning of Section 3(i) of the Act, and the exclusive representative of a bargaining unit of employees, including those in the title or classification of Records Supervisor (Technical Unit). At all times relevant, Armstrong was a member

of the SEIU bargaining unit. Respondent and Union are parties to a collective bargaining agreement (CBA) which provides for a grievance procedure culminating in arbitration.

Geraldine Armstrong has worked for the Maywood Police Department since 1982. During much of that time she has been Union Steward for SEIU, Local 73, and has filed grievances, participated in an unfair labor practice proceeding before the Board (Case No. S-CA-01-161)[1] and has served on the Union's bargaining team.

On March 15, 2012, Charging Party was directed by her immediate supervisor Commander Kim E. West, to "begin training SEIU clerk Helen Robertson on all aspects of your position, so that she is prepared to perform the duties and responsibilities of your position, in your absence. The training is to begin on Friday March 16, 2012." On March 19, 2012, Charging Party presented a grievance to Commander West, grieving that she was being required to train Robertson. When Armstrong presented the grievance to West, West acknowledged the substance of the grievance and stated, "So you are saying since Helen is a floater and floaters are not in your contract, you don't want to train her?" According to Armstrong, West then became increasingly more agitated and allegedly waved her finger and yelled, "Well I'm ordering you to train her (Helen) for the rest of the week!" Armstrong argues West's conduct constitutes a threat and harassment and violates the Act in that it was done to discourage her from filing grievances. Moreover, according to Charging Party, West continued to demonstrate her hostility towards Charging Party during the 2nd step grievance meeting; though Charging Party failed to specify how Commander West allegedly manifested this hostility.

Respondent's version of the exchange is slightly less contentious than what Armstrong alleges. West asserts that after Armstrong handed her a stack of papers (grievance) Armstrong stated, "I am

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[1] On December 20, 2001, the Board issued a complaint for hearing in Case No. S-CA-01-161, alleging Respondent violated the Act, in part, by laying off Armstrong and other bargaining Unit employees for having engaged in protected concerted activity. Prior to hearing, Respondent and SEIU settled the unfair labor practice case. Armstrong claims that after she was returned from the illegal lay-off her salary has been frozen. Armstrong further claims that a grievance that was filed in 2002 over her salary has been ignored by Respondent and never resolved.

starting at the beginning." West asked Armstrong, "What is this about?" When Armstrong did not respond to West's inquiry, she said to her, "You are not talking to me," and asked her, "What is wrong now?" West claims that Armstrong claimed that she was not being treated fairly. When West continued to inquire, Armstrong stated, "Just read the grievance." Armstrong stated that she was being made to train the floater. It is then that West directed Armstrong to train the floater. West neither admits nor denies she raised her voice when she directed Armstrong to train the floater.

Next, Charging Party claims West violated the Act by disciplining her because she had attended a negotiation session on April 3, 2012, and because she provided evidence in an unfair labor practice proceeding in Case No. S-CA-01-161 referenced above. On April 3, 2012, prior to the end of Armstrong's work shift, Union Steward John Weaver contacted Charging Party and told her negotiations were in progress and that she should be there. Armstrong made efforts to contact Commander West by telephone to inform her that she would be in negotiations, but was unable to reach her. Armstrong left a message on West's work phone and then informed other employees in her work area that she would be in negotiations. Armstrong then closed the records department prior to closing time. Upon learning that Armstrong had left her work area, West recommended to Chief of Police Tim Curry that Armstrong be disciplined with a two day suspension. Subsequently, the Union grieved the proposed suspension and the discipline was ultimately reduced to a written reprimand.

## II. DISCUSSION AND ANALYSIS

### a. Section 10(a)(1) Allegation

Section 10(a)(1) forbids an employer from interfering with employees' protected rights or lending support to a labor organization. Assuming, as Charging Party alleges, West waved her finger and yelled at her when presented with the grievance, the issue is whether that conduct violated Section 10(a)(1) of the Act. In order to find that statements violate the Act, it must first be found that the challenged material contains a threat of force or reprisal or promise of benefit by the employer.

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." See, Movie Star, Inc., 361 F.2d 346, 62 LRRM 2234 (5th Cir. 1966)(wherein the court denied enforcement of a National Labor Relations Board (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 National Labor Relations Act (NLRA).) The language in Section 10(c) of the Illinois Public Labor Relations Act was derived from Section 8(c) of the NLRA. Whether questioned statements are permissible under section 10(c), the statements must be considered in the context in which they were made and in view of the totality of the employer's conduct.

The Board has long held that cases involving a threat predicated on speech must be scrutinized carefully and viewed objectively from the standpoint of an employee to determine whether that speech would reasonably have 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). In such cases, proof of illegal motivation is not required to show a violation of Section 10(a)(1). Id. Consistent therewith, pursuant to the protected speech provision in Section 10(c) of the Act, an employer's statements are privileged and 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. City of Mattoon, 11 PERI ¶2016 (IL SLRB 1995); City of Chicago (Department of Health), 10 PERI ¶3031 (IL LLRB 1994). Charging party need not make any showing that employees were in fact coerced, restrained, or interfered with, or that respondent had a "bad" motive. See, 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.) Thus, the issue in the instant matter is whether a reasonable employee in Armstrong's circumstances would view West's comment as conveying a promise of benefit or threat of reprisal or force.

Even construing the facts in the light most favorable to Charging Party and assuming West waved her finger, yelled at Armstrong, and made the statement as Armstrong alleged, the communication contained no threat of reprisal. West's comments to Charging Party were essentially a restatement of West's original directive to train another employee. Supervisors have the right to issue directives and give direct orders, just as employees have the right to grieve directives and orders. West's comment may have been imprudent and conveyed annoyance, but the statement did not violate the Act. Moreover, no reasonable employee under these circumstances would view the brusque and curt directive as conveying a threat of reprisal or force. Therefore, Charging Party's independent Section 10(a)(1) claim is without merit and is dismissed.

**b. Section 10(a)(2) Allegation**

Another issue in the instant matter is whether Charging Party's union activity was a motivating factor for the disciplinary personnel action that was taken after Charging Party left her duty station to go to the negotiations session. Charging Party alleges that certain acts, in particular disciplining her for attending negotiations, were committed against her because of, and in retaliation for, the exercise of protected, concerted or Union activity under the Act. Section 10(a)(2) forbids an employer from discriminating against employees to encourage or discourage their support for or membership in a labor organization. In City of Burbank v. Illinois State Labor Relations Board, 128 Ill.2d 335, 538 N.E.2d 1146 (1989), the Illinois Supreme Court established the standard to be applied to cases under Section 10(a)(2) of the Act. A charging party must show, by a preponderance of the evidence, that (1) charging party was engaged in union or protected concerted activity; (2) the employer knew of

charging party's conduct; and (3) the employer took the action against charging party in whole or in part because of anti-union animus or was motivated by charging party's protected conduct.

It is beyond dispute that Respondent was aware of Armstrong's protected activity, if not because of all of Armstrong's previous protected union activity, then for the recent grievance Charging Party filed contesting the employer's right to require her to train another employee. Charging Party further alleges Respondent disciplined her for attending negotiations and that such action constitutes a violation of the Act. The focus of the unfair labor practice investigation in situations such as this turns on the motive requirement to satisfy that Respondent's actions were prompted by the employee's protected activity. Despite Armstrong's claim that Respondent disciplined her for attending negotiations and engaging in other protected activity, the allegation fails in that it ignores the basis for which Armstrong was actually disciplined. Respondent's discipline of Armstrong was because she left her duty station in the records department without permission from her supervisor, and closed the department prior to closing time without obtaining her supervisor's permission; all reasons that justify disciplinary action and do not involve anti-union animus. Presumably, Respondent would have taken the same action despite Charging Party's protected activity. Therefore, the Section 10(a)(2) violations are dismissed.

**c. <u>Section 10(a)(3) Allegation</u>**

Section 10(a)(3) prohibits discrimination against employees because they have filed or participated in Board proceedings. Charging Party alleges that Respondent took adverse action against her, in part, for participating in an unfair labor charge filed March 5, 2001. It is true that Charging Party met the requirement of participating in a Board proceeding by her involvement in the filing of the 2001 unfair labor practice charge. Nevertheless, there is no causal connection between Armstrong's discipline and her participation in those proceedings before the Board. The 2001 unfair labor practice charge is wholly unrelated to the circumstances of the 2012 discipline and too remote in

time to serve as evidence of Respondent's motivation for the charges alleged herein. For these reasons, the Section 10(a)(3) violation is dismissed.

## 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 8th day of August, 2012.**

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

**Melissa Mlynski**
**Executive Director**