

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

Service Employees International Union,	)	
Local 73,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. S-CA-12-175
	)	
Village of Oak Park,	)	
	)	
Respondent	)	

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

On November 20, 2012, Executive Director Melissa Mlynski issued a partial dismissal of amended unfair labor practice charges filed by Service Employees International Union Local 73 (Charging Party) against the Village of Oak Park (Respondent) in the above-referenced case. On that same date she deferred all remaining issues in the case to grievance arbitration. Pursuant to Section 1200.135(a) of the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code Parts 1200 through 1240 (Board Rules), Charging Party filed a timely appeal of the dismissal, and Respondent filed a timely response. Pursuant to Section 1200.135(a) and Section 1220.65(d)<sup>1</sup> of the Board Rules, Charging Party also filed a separate timely appeal of the deferral, and Respondent, again, filed a response. We address both appeals in this decision and order, and for the reasons which follow, affirm both of the Executive Director's actions.

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<sup>1</sup> Section 1220.65(d) provides:

If the motion to defer the resolution of an unfair labor practice charge is made during the investigation, the Executive Director will rule on the motion by issuance of an order or a complaint for hearing. Parties may appeal the Executive Director's orders in accordance with 80 Ill. Adm. Code 1200.135(a). Complaints for hearing are not appealable. If the motion to defer the resolution of an unfair labor practice charge is made after the issuance of a complaint for hearing, the Administrative Law Judge shall rule on the motion in accordance with 80 Ill. Adm. Code 1200.45. Parties may appeal the Administrative Law Judge's ruling on the motion to defer in accordance with 80 Ill. Adm. Code 1200.135(b).

**Issues presented**

There are two issues presented. First, whether the Executive Director properly dismissed that portion of the charges which alleged that Respondent's hiring of a temporary worker and reduction of permit clerk Marilyn Michaels' hours constituted a violation of Section 10(a)(2) of the Act. The second is whether the Executive Director properly deferred to arbitration the portion of the charges alleging that Respondent's suspension of Michaels violated Section 10(a)(2) of the Act.

**Relevant facts**

The Charging Party is the exclusive bargaining representative of a group of full- and part-time clerical employees employed by the Village of Oak Park. At the time the instant charge was filed, the parties were operating under a collective bargaining agreement (Agreement) entered into between the Respondent and the International Association of Machinists and Aerospace Workers, AFL-CIO District 8, which was effective from January 1, 2009, through December 31, 2010. On September 7, 2011, the Charging Party was certified as the representative for the bargaining unit by an election in Case No. S-RC-12-001.

Marilyn Michaels, a member of the bargaining unit represented by the Charging Party, is employed by the Respondent as a permit clerk. On or around January 2011, Michaels began working some hours every day of the week. On November 2, 2011, the Charging Party filed a grievance alleging that the Respondent had violated the Agreement by failing to pay Michaels overtime pay for hours worked on Saturdays and Sundays. This grievance was resolved when the Respondent paid Michaels for the unpaid overtime, though it is unclear when the resolution occurred.

On November 9, 2011, a temporary worker began training as a permit clerk. Michaels began to work Wednesdays through Sundays. On November 10, 2011, the Charging Party filed a grievance alleging that the Respondent had violated the Agreement by hiring a temporary worker to complete bargaining unit work. It is not clear whether or how this grievance was resolved. In January 2012, the temporary worker left that position.

On February 9, 2012, the Charging party filed a third grievance, this time alleging that Respondent had violated the Agreement by running the parking pass line short of staff rather

than allowing Michaels to work overtime on Tuesdays and receive overtime pay. At the time of the Executive Director's dismissal, this grievance was at step three of the grievance process.

Finally, on March 13, 2012, Michaels received notice of a disciplinary hearing for falsifying her time in January and March 2012. Michaels was ultimately given a three-day suspension on May 2, 2012; the Charging Party filed a grievance regarding the suspension on May 3, 2012. On May 14, 2012, the Charging Party filed the instant charge alleging that Michaels had been suspended in retaliation for the grievances filed on her behalf. The Charging Party amended the charge on June 11, 2012, to include an allegation that the Respondent had also hired the temporary worker in November 2011 and denied Michaels the opportunity to work overtime for the purpose of continuing to discriminate against Michaels.

### **Procedural history**

The amended charge alleged that the Respondent violated Sections 10(a)(2) and 10(a)(3) of the Act<sup>2</sup> by suspending Michaels for three days, denying her the opportunity to work overtime, and hiring a temporary worker in her job description in retaliation for the grievances filed by the Charging Party on her behalf. Following an investigation pursuant to Section 11 of the Act, the Executive Director issued a Partial Dismissal on November 20, 2012. The allegation that the Respondent had violated Section 10(a)(2) of the Act by suspending Michaels in retaliation for her protected activity was deferred pending the outcome of arbitration in the related grievance. The allegation that the Respondent violated Section 10(a)(3) of the Act was dismissed on the grounds that no evidence indicated that Michaels was involved in activity before this Board prior to the filing of the instant charge. Finally, the allegations that the Respondent violated Section 10(a)(2) of the Act by hiring a temporary worker in Michaels' job description and by denying her the opportunity to work overtime were dismissed on the grounds

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<sup>2</sup> These sections make it an unfair labor practice for an employer

(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;

(3) to discharge or otherwise discriminate against a public employee because he has signed or filed an affidavit, petition or charge or provided any information or testimony under this Act;

that the Charging Party had failed to demonstrate that the Respondent had taken these actions in retaliation for Michaels's protected activity. Against the Charging Party's assertions that this conduct was motivated by anti-union animus or by the Respondent's desire to retaliate against Michaels, the Executive Director concluded that it was equally reasonable to infer that the Respondent's actions were designed to limit its labor costs. Thus, while the actions were connected to the grievances filed on Michaels's behalf in the sense that the November 2, 2011, grievance alerted the Respondent to its overtime liability, the Charging Party had not established that the Respondent's motives for hiring a temporary worker and not permitting Michaels to work overtime were improper.

On December 4, 2012, Charging Party filed an appeal of the Executive Director's Partial Dismissal. On December 6, 2012, Charging Party filed an appeal of the Executive Director's Defferal to Arbitration of the Section 10(a)(2) charges relating to a three-day suspension Michaels received for allegedly falsifying time records.

#### **The appeal of the partial dismissal**

In its appeal of the partial dismissal, Charging Party makes no mention of its allegations under Section 10(a)(3) of the Act. Instead, Charging Party argues that the Executive Director erred in dismissing the allegation that Respondent violated Section 10(a)(2) of the Act because of the "highly suspicious" timing of Respondent's actions, namely hiring a temporary employee within a week of when the first grievance on Michaels's behalf was filed, is sufficient to establish the Respondent's retaliatory motive. Furthermore, Charging Party attempts to discredit the Executive Director's characterization of Respondent's motives, arguing that it is implausible that a sophisticated government employer such as Respondent "would be so ignorant of where its money is flowing."

Section 10(a)(2) of the Act provides that it is an unfair labor practice for an employer to discriminate in regard to hire or tenure of employment or any term or condition thereof in order to encourage or discourage membership in or support for any labor organization. 5 ILCS 315/10(a)(2) (2012). In order to establish a prima facie case that an employer has violated Section 10(a)(2), a charging party must prove that: (1) employee(s) engaged in union or other protected concerted activity; (2) the employer was aware of that activity; and (3) the employer took adverse action against the involved employee(s) for engaging in that activity in order to

encourage or discourage union membership or support. New Lenox Fire Protection District, 24 PERI ¶ 78 (IL LRB-SP 2008) (citing City of Burbank v. Illinois State Labor Relations Board, 128 Ill. 2d 335 (1989)). Charging Party agrees with the Executive Director's finding that the first two elements are satisfied: it is clear that Michaels engaged in union activity when grievances were filed on her behalf and that the Respondent was aware of this activity because of its involvement in the grievance process, including resolving the first grievance by paying Michaels for unpaid overtime. In order to satisfy the third element, there must be evidence that the Respondent's actions that were adverse to Michaels were based, in whole or in part, on anti-union animus, or that her union activity was a substantial motivating factor. Id. (citing City of Burbank). The Charging Party has failed to show this.

Anti-union animus may be inferred from circumstantial evidence, such as: expressions of hostility toward unionization together with knowledge of an employee's union activities; the proximity in time between an employee's protected activities and an employer's adverse action; disparate treatment of union employees or targeting of union supporters; inconsistencies between an employer's explanation of its actions and its other conduct; and shifting explanations for an adverse action. Id. (citing City of Burbank). In this case, the Charging Party cites the "highly suspicious" timing of the Respondent's actions, specifically, the fact that Respondent hired a temporary employee in Michaels's job description within a week of the date the first grievance was filed on her behalf. However, timing alone is not sufficient to establish a charging party's prima facie case. Id. (citing County of Cook, 21 PERI ¶ 53 (IL LLRB 2005); Culbertson Memorial Hospital, 21 PERI ¶ 6 (IL SLRB 2005); Village of Franklin Park, 17 PERI ¶ 2033 (IL SLRB 2001); and Metropolitan Sanitary District of Greater Chicago, 2 PERI ¶ 3012 (IL LLRB 1986)). In this case, the Charging Party's only evidence of improper motive is the timing of the Respondent's actions. Not only is this insufficient under Board precedent, but as the Executive Director's dismissal indicated, the timing of the Respondent's actions may be explained by the Respondent's desire to limit its labor costs after learning that Michaels's schedule entitled her to both time-and-a-half and double-time pay each week. Though the Charging Party is incredulous at this explanation, it has not provided the additional evidence that could demonstrate improper motive, such as inconsistencies between this explanation and the Respondent's subsequent activities or changes in the Respondent's explanation. In fact, it appears that the Respondent's

conduct has been consistent with its desire to limit labor costs, as it not only hired a temporary worker in November 2011 but also continued to limit overtime by decreasing shift staffing following that worker's departure in January 2012. Furthermore, while the Charging Party argues that Michaels was regarded as a "problem" after grievances were filed on her behalf, it has failed to even allege that Michaels was treated differently than other employees who were not regarded as "problem" employees. For example, the Charging Party does not argue that Michaels was the only employee affected by the decision to hire a temporary employee or the only employee who was not permitted to work overtime in February 2012. This is, again, more consistent with the explanation that the Respondent sought to limit its labor costs than with proof of anti-union animus or a retaliatory motive.

Because the Charging Party has failed to provide evidence of anti-union animus other than the timing of the Respondent's decision to hire a temporary worker in Michaels's job description, it is unable to establish its prima facie case that the Respondent's actions violated Section 10(a)(2) of the Act. Accordingly, we uphold the Executive Director's partial dismissal.

#### **The appeal of the deferral**

As the Executive Director noted, in City of Mt. Vernon, 4 PERI ¶2006 (IL SLRB 1988), this Board's predecessor adopted the three primary deferral policies previously established by the National Labor Relations Board: post-arbitral deferral established in Spielberg Mfg. Co., 112 NLRB 1080 (1955); deferral to pending arbitration as in Dubo Mfg. Corp., 142 NLRB 431 (1963); and deferral to potential arbitration not yet initiated as in Collyer Insulated Wire, 192 NLRB 837 (1971). The Executive Director found Dubo deferral potentially applicable and listed its three elements: (1) the parties have already voluntarily submitted their dispute to their agreed-upon grievance arbitration procedure; (2) that procedure culminates in final and binding arbitration; and (3) there exists a reasonable chance that the arbitration process will resolve the dispute. Dubo Mfg. Corp., 142 NLRB 431; State of Ill., Dep't of Cent. Mgmt. Servs. (Dep't of Human Servs.), 19 PERI ¶114 (IL LRB-SP 2003); Pace N.W. Div., 10 PERI ¶2023 (IL SLRB 1994); City of Mt. Vernon, 4 PERI ¶2006 (IL SLRB 1988). Finding evidence concerning the first and last elements, the Executive Director concluded Dubo deferral was applicable without making any specific finding on the second factor which requires that grievance procedures will culminate in final and binding arbitration.

In appealing the Executive Director's deferral of the Section 10(a)(2) charges relating to a three-day suspension Michaels received for allegedly falsifying time records, Charging Party stresses that deferral is a discretionary action, and it argues that the Board should consider the totality of circumstances, i.e., all of its allegations including those the Executive Director dismissed. It states that by choosing to defer, the Board would be "abandoning an opportunity to identify and correct the sort of unfair labor practices . . . the Board was designed to stop." Charging Party states that the Illinois Educational Labor Relations Board<sup>3</sup> and the Pennsylvania Labor Relations Board<sup>4</sup> do not defer discrimination charges, and that the National Labor Relations Board has found Collyer deferral inappropriate where the gravamen of the charge is retaliation.

In addition to urging the Board to not apply deferral to allegations of discrimination, Charging Party asserts that, though it and Respondent currently operate under the collective bargaining agreement between Respondent and its predecessor, International Association of Machinists Local 8, Respondent has been denying that the grievance and arbitration procedures of that contract are binding on it and has routinely disclaimed its duty to arbitrate in its grievance step responses. It argues that deferral is thus inappropriate because the Employer refuses to credibly waive all procedural obstacles to arbitration.

In response, Respondent states deferral is appropriate whenever there is a reasonable chance arbitration will resolve the dispute. Moreover it cites three Board decisions and one General Counsel order for the proposition that the Board has repeatedly held that retaliation and discrimination claims may be deferred.<sup>5</sup> It notes that Charging Party cites no Board decisions in

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<sup>3</sup> Charging Party quotes from Bd. of Trustees of the Univ. of Ill., 15 PERI ¶1053 (IL ELRB 1998), denying deferral "based on our belief that we cannot abdicate or avoid our statutory duty to hear and dispose of unfair labor practice charges by ceding our jurisdiction to private tribunals." In that case, the IELRB found pre-arbitral deferral (i.e. Collyer deferral) improper for an independent violation of Section 14(a)(1) of the Illinois Educational Labor Relations Act, 115 ILCS 5/14/(a)(1) (2010), the equivalent of our Act's Section 10(a)(1), 5 ILCS 315/10(a)(1) (2010). Indeed, it appears that the IELRB will only defer alleged violations of Section 14(a)(5) of the Illinois Educational Labor Relations Act, the equivalent of Section 10(a)(4) (failure to bargain) in our Act. See Mary Pugh and Chicago Bd. of Educ., 27 PERI ¶32 n.4 (IL ELRB Exec. Dir. 2010), aff'd on other grounds, (IL ELRB 2010) (citing Univ. of Ill.).

<sup>4</sup> Charging Party cites to Washington County, 23 PPER ¶23073 (PA LRB 1992).

<sup>5</sup> Respondent cites City of Waukegan, 24 PERI ¶77 (IL LRB-SP 2008), City of Alton, 22 PERI ¶102 (IL LRB-SP 2006), City of Chicago, 10 PERI ¶3001 (IL LRB 1993), and Ill. Sec'y of State, 23 PERI ¶3 (IL LRB G.C. 2007).

support of its position, and argues the cases Charging Party cites are distinguishable. It notes Charging Party quotes an ALJ recommended decision part of which was reversed by the Board with direction to consider deferral, Chicago Transit Auth., 17 PERI ¶3003 (IL LRB-LP 2000). It notes the Illinois Educational Labor Relations Act specifically references deferral only with respect to its Section 14(a)(5) and not with respect to the other eight listed types of unfair labor practices in Section 14(a); in contrast, our Act makes no reference to deferral in any of the types of unfair labor practices listed in its Section 10(a), but references it more universally in the section setting out unfair labor practice procedures. Specifically, Section 11(i) states: “If an unfair labor practice charge involves the interpretation or application of a collective bargaining agreement and said agreement contains a grievance procedure with binding arbitration as its terminal step, the Board may defer the resolution of such dispute to the grievance and arbitration procedure contained in said agreement.” It notes the NLRB case cited by Charging Party involved Collyer deferral, not Dubo deferral which it states the NLRB finds appropriate even for retaliation claims, citing Kvaerner Philadelphia Shipyard, Inc., 347 NLRB No. 36 (2006).

With respect to Charging Party’s second basis for rejecting deferral, Respondent affirmatively states: “The Village agrees to arbitrate the issue of Ms. Michaels’ 3-day suspension, and to waive all procedural objections to the arbitration of that matter.” It argues its past position with respect to arbitration is irrelevant, and that the only question is whether the employer is currently and genuinely willing to arbitrate the matters contained within the charge.

We find Respondent has the better argument with respect to the applicability of Dubo deferral to claims of discrimination and retaliation. Respondent is correct that critical differences in the wording of the two primary Illinois labor relations acts render IELRB precedent on the point of no value. It is also correct that the NLRB decision cited by Charging Party did not involve Dubo deferral and that the NLRB does, in fact, defer some retaliation charges. And it is correct that this Board has in the past deferred retaliation claims. In fact, the Board extensively addressed this issue in Amalgamated Transit Union Local 1028 and Pace N.W. Div., 10 PERI ¶2023 (IL SLRB 1994):

In determining that it is proper to extend our holding in *City of Mount Vernon*, and defer unfair labor practice charges alleging independent violations of Section 10(a)(1) and (2) of the Act, the purpose of the Act itself serves as our guidepost. In that regard, we previously stated in *Village of Creve Coeur*, 3 PERI ¶ 2063 (IL

SLRB 1987), that:

The purpose of the Act, as expressed in its public policy section, is to “regulate labor relations between public employers and employees, including resolution of disputes arising under collective agreements.” The Act provides a comprehensive scheme to effectuate that policy. Section 8 of the Act expresses the Illinois legislature's strong intent that disputes be resolved, whenever possible by contractually agreed-upon methods. To that end, that section requires that, unless both parties agree otherwise, all collective bargaining agreements *must* contain a grievance procedure culminating in binding arbitration.

Additionally, as we have already recognized herein, the grievance arbitration process itself is part of the collective bargaining process. Even in cases involving alleged independent violations of Section 10(a)(1) or 10(a)(2) of the Act we believe that neither the policy of the Act, nor the collective bargaining process itself, is well served by allowing parties to circumvent their agreed upon dispute resolution procedure and utilize the Board's processes prior to the culmination of their agreed upon procedure. In accord with decisions of other labor relations boards, including the decision of the NLRB in *Dubo*, we will defer unfair labor practice charges alleging independent violations of Section 10(a)(1) or 10(a)(2) of the Act. It is important to state at this point, however, that we will now do so only where the parties have already voluntarily utilized their agreed upon dispute resolution mechanism [i.e., Dubo deferral] and the other requirements of *City of Mount Vernon* have been met. We leave for future consideration the issue of deferral in cases where the parties have not as yet invoked their grievance and arbitration process (i.e. Collyer deferral].

We see no reason to change the course we set nearly 20 years ago, and will continue to contemplate deferral of retaliation charges when presented in contexts similar to Dubo.

With respect to Charging Party's second basis for rejecting deferral, both parties indicate there has been some sort of assurance regarding use of arbitration. Charging Party asserts that “the Employer refuses to *credibly* waive all procedural obstacles to arbitration,” while Respondent protests that it is “*genuinely* willing to arbitrate the matters contained within the charge.” While Respondent has not denied Charging Party's assertion that it had been claiming

no obligation to arbitrate under the collective bargaining agreement it had reached with Charging Party's predecessor, Respondent has now affirmatively stated to the Board that it will arbitrate. Should it not live up to its promise, we will allow Charging Party to reinstate the charges and will in that context consider a motion for sanctions. With this contingency, we affirm the Executive Director's deferral to arbitration.

**Summary**

We affirm both the Executive Director's partial dismissal and her deferral to arbitration.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ John J. Hartnett

John J. Hartnett, Chairman

/s/ Paul S. Besson

Paul S. Besson, Member

/s/ James Q. Brennwald

James Q. Brennwald, Member

/s/ Albert Washington

Albert Washington, Member

Decision made at the State Panel's public meeting in Chicago, Illinois on April 16, 2013; written decision issued in Chicago, Illinois on July 19, 2013.

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

Service Employees International )  
Union, Local 73, )  
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Charging Party )  
 )  
and )  
 )  
Village of Oak Park, )  
 )  
Respondent )

Case No. S-CA-12-175

**PARTIAL DISMISSAL**

On May 14, 2012, the Service Employees International Union, Local 73 (Charging Party) filed an unfair labor practice charge with the State Panel of the Illinois Labor Relations Board (Board), in Case No. S-CA-12-175, alleging that the Village of Oak Park (Respondent or Employer), engaged in unfair labor practices in violation of Section 10(a) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2010), *as amended*. On June 11, 2012, the Charging Party amended the unfair labor practice charge in Case No. S-CA-12-175. After an investigation conducted pursuant to Section 11 of the Act, I determined that a portion of the charge fails to raise an issue of law or fact sufficient to warrant a hearing and hereby issue this partial dismissal for the following reasons.

**I. INVESTIGATORY FACTS**

The Charging Party is the exclusive bargaining agent for a group of the Respondent's full and part-time clerical and secretarial employees (Unit). The parties are operating under a collective bargaining agreement (Agreement) between the Respondent and the International Association of Machinists and Aerospace Workers, AFL-CIO District 8 (IAM) that was effective from January 1, 2009 through December 31, 2010. On September 7, 2011, the Charging Party

was certified as the representative for the Unit by an election in Case No. S-RC-12-001. On January 5, 2012, the Charging Party and the Respondent began negotiating a successor Agreement.

Marilyn Michaels is employed by the Respondent as a Permit Clerk. Michaels worked at least some hours every day of the week beginning in January 2011. On November 2, 2011, the Charging Party filed a grievance alleging that she was improperly denied overtime pay for working on Sundays. This grievance was resolved on an undisclosed date when the Respondent paid Michaels for work on Sundays. On November 9, 2011, the Respondent hired a temporary worker to work as a Permit Clerk. Michaels began to work Wednesdays through Sundays. On November 10, 2011, the Charging Party filed a grievance alleging that the Respondent hired this temporary worker to work any overtime hours that Michaels would normally work. In January 2012, the temporary worker left that position. On February 9, 2012, the Charging Party filed a grievance alleging that Michaels was being denied the opportunity to work on Tuesdays and receive overtime pay. This grievance is currently at step 3 of the grievance process.

On March 13, 2012, Michaels received notice of a hearing for falsifying her time in January and March 2012. On May 2, 2012, Michaels received notice that she would be suspended for three days. On May 3, 2012, the Charging Party filed a grievance alleging that the Respondent violated the Agreement by suspending Michaels. On May 14, 2012, the Charging Party filed this unfair labor practice charge, alleging that the Respondent wrongfully disciplined Michaels because she filed grievances. On June 11, 2012, the Charging Party amended the charge to allege that the Respondent also hired a temporary worker and denied Michaels the opportunity to work overtime for the purpose of continuing to discriminate against Michaels.

## **II. POSITIONS OF THE PARTIES**

The Charging Party claims that the Respondent violated Sections 10(a)(2) and (3) of the Act by suspending Michaels for three days, refusing to give her overtime and hiring a temporary worker in her job description. The Charging Party alleges that Michaels filed grievances before the Respondent took any of the adverse employment actions. The Charging Party claims that the only recent noteworthy events are Michaels' grievances so the Respondent's adverse employment actions are clearly in retaliation for Michaels' grievances.

The Respondent claims that the alleged violation of Section 10(a)(3) of the Act should be dismissed because Michaels did not participate in any activity with the Board. The Respondent also claims that they did not violate Section 10(a)(2) of the Act because Michaels was not discriminated against in regards to assigning hours but ultimately was treated more favorably than other employees. The Respondent also alleges that the Charging Party presented no evidence of anti-union animus. Finally, the Respondent claims that they did not violate Section 10(a)(2) of the Act because they have legitimate reasons for all of the alleged adverse employment actions.

## **III. ANALYSIS**

The Charging Party claims that the Respondent violated Section 10(a)(3) of the Act by suspending Michaels in retaliation for her earlier grievances. Section 10(a)(3) of the Act makes it an unfair labor practice to "discharge or otherwise discriminate against a public employee because he has signed or filed an affidavit, petition or charge or provided any information or testimony under this Act." 5 ILCS 315/10 (a)(3) (2010). In order to establish a violation of Section 10(a)(3) of the Act, the Charging Party must show that an employer took an adverse action against a public employee because of his or her involvement in proceedings before this

Board. Illinois Department of Central Management Services (Department of Corrections), 18 PERI ¶ 2059 (IL SLRB 2002).

In this case, Charging Party presented no evidence to show that Michaels was involved in any activity before this Board prior to the filing of the instant charge. Even in the amendment to the charge, the charging party does not claim that the alleged adverse employment actions were in retaliation for activity before this Board or were in retaliation for the original charge filing. Accordingly, the Charging Party presented no evidence regarding Michaels' activity before this Board sufficient to raise an issue for hearing on any 10(a)(3) claim.

The Charging Party also claims that the Respondent violated Section 10(a)(2) of the Act when it suspended Michaels, allegedly in retaliation for her grievance activities. I find that there are sufficient issues of law or fact which preclude a dismissal of this claim. However, for reasons set out in a separate document, I find that disposition of this allegation shall be deferred until the parties have completed processing the contract grievance concerning the suspension.

The remainder of the 10(a)(2) charge concerns the Respondent's decision to hire a temporary worker and the subsequent denial of the opportunity for Michaels to accrue overtime. Section 10(a)(2) of the Act prohibits an employer from discriminating against public employees on the basis of union activity or support. To establish a prima facie case in support of an alleged violation under Section 10(a)(2), Charging Party must, at the investigative stage, provide a showing that: (1) the employee engaged in union and/or protected, concerted activity; (2) that the employer had knowledge of such activity; and (3) that the employer took an adverse employment action against the employee, in whole or in part because of anti-union animus, or that the protected conduct was a substantial or motivating factor in the adverse action. City of Burbank v. IL SLRB, 128 Ill.2d 1146, 131 Ill.Dec. 590 (1989).

It clearly appears that there is a connection between the Respondent hiring a temporary worker and Michaels' protected activity, insofar as the hiring occurred shortly after the Respondent agreed that it should grant the original overtime grievance. It can even be assumed that Michaels' grievance alerted the Respondent to the fact that Michaels was working enough hours so that they were required to pay her overtime. Therefore, the Respondent hired a temporary worker and changed Michaels' schedule as a result of Michaels' protected activity. However, there is not enough evidence to assume that the Respondent took these actions in retaliation for Michaels' protected activity.

The Charging Party presented no evidence to show that any agent of the Respondent was angered by Michaels' grievance or the disposition thereof. On the other hand, it is obvious that the Respondent realized that it would face some overtime liability if Michaels were to continue with her current schedule. Under these circumstances, it is equally reasonable to infer that the Respondent sought to limit its labor costs, as opposed to embarking upon a campaign to retaliate against Michaels. Therefore, there is no issue of fact or law sufficient to require a hearing regarding whether the Respondent violated Section 10(a)(2) of the Act by changing Michaels' schedule or hiring a temporary worker.

#### **IV. ORDER**

Accordingly, the portions of the instant charge as described above are hereby dismissed. The Charging Party may appeal this partial dismissal to the Board any time within 10 days of service hereof. Such appeal must be in writing, contain the case caption and number, and must be addressed to the General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois, 60601-3103. The appeal must contain detailed reasons in support thereof, and the Charging Party must provide it to all other persons or organizations

involved in this case at the same time it 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 the appeal has been provided to them. The appeal will not be considered without this statement. If no appeal is received within the time specified, this partial dismissal will be final.

**Issued at Springfield, Illinois, this 20th day of November, 2012.**

**ILLINOIS LABOR RELATIONS BOARD  
LOCAL PANEL**



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**Melissa Mlynski, Executive Director**