

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

Joseph S. McGreal,)	
)	
Charging Party)	
)	
and)	Case No. S-CA-13-001
)	
Village of Orland Park,)	
)	
Respondent)	

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

On April 30, 2013, Executive Director Melissa Mlynski dismissed an unfair labor practice charge filed by Charging Party, Joseph S. McGreal, against Respondent, Village of Orland Park (Village), alleging Respondent violated Sections 10(a)(1), (2) and (3) of the Illinois Public Labor Relations Act, 5 ILCS 315(a)(1), (2) & (3) (2010). Charging Party timely filed an appeal of the dismissal pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200 through 1240 (Board's Rules), and the Village filed a response. After a review of Charging Party's appeal, the response, and the record, we affirm the Executive Director's dismissal.

The essential facts concern the Village's use of an arbitrator who was not a member of the National Academy of Arbitrators (NAA) as required by a provision in the collective bargaining agreement entered between the Village and the Metropolitan Alliance of Police, Chapter #159 (MAP). The facts are more fully set out in the Executive Director's Dismissal and in the decision we issue today in related Case No. S-CB-13-003. McGreal's unfair labor practice charge against the Village, filed July 2, 2012, alleges violations of Section 10(a)(1), (2) and (3)

of the Act.¹ It alleges that, when confronted with the fact that the arbitrator failed to meet the requirements of the collective bargaining agreement, the Village falsely claimed that Charging Party had waived any objections to the arbitrator's jurisdiction. As relief, McGreal requested: "That the ILRB recognize that the arbitrator lacked jurisdiction to hear matters and reassign the [unfair labor practice] hearing to an ILRB hearing officer or administrative law judge."

As noted by the Executive Director, a charging party must establish that an employer took adverse action against him because of anti-union animus or because of charging party's conduct in order to establish a violation of Section 10(a)(2) or Section 10(a)(3), or Section 10(a)(1) when the 10(a)(1) charge is based on allegations of retaliation for protected activity. The Executive Director dismissed the charges against the Village because she found insufficient evidence that the Village took adverse action against McGreal out of anti-union animus or because he had engaged in protected or Board activity. She found that the Respondents' failure to make NAA membership a prerequisite for the arbitrator did not constitute a violation of the

¹ Section 10(a) provides, in relevant part

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;

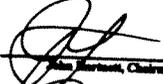
(2) to discriminate in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in or other support for any labor organization. Nothing in this Act or any other law precludes a public employer from making an agreement with a labor organization 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[.]

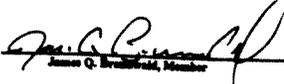
Act. She found parties may negotiate specific provisions and requirements with respect to the grievance procedure contemplated by the Act, but are also free to waive those requirements. And she found it immaterial whether they had waived the NAA membership requirement here consciously or through oversight; ultimately they possessed the discretion to determine how to administer the contract. Citing to Village of Creve Couer, 3 PERI ¶2063 (IL SLRB 1987), she noted that the Board has long held that it will not police the parties' collective bargaining agreement in order to obtain specific enforcement of contract terms. Indeed, we reaffirm that principle here and in our decision issued today in related Case No. S-CB-13-003.

Considering the merits of the dismissal outside the limited basis raised in the appeal, we must conclude that the Executive Director was right to dismiss the charges filed against the Village. There simply is no evidence that the manner in which the Village prosecuted the arbitration was motivated out of an anti-union bias or because McGreal had engaged in conduct protected by the Act. We affirm the dismissal.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD


John J. Harbeck, Chairman


Paul G. Rosen, Member


James Q. Bradford, Member


Michael G. Coll, Member


Albert Washington, Member

Decision made at the State Panel's public meeting in Springfield, Illinois on June 11, 2013; written decision issued in Chicago, Illinois on June 28, 2013.

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

Joseph S. McGreal,

Charging Party

and

Village of Orland Park,

Respondent

Case No. S-CA-13-001

DISMISSAL

On July 2, 2012, Charging Party, Joseph S. McGreal, filed a charge with the State Panel of the Illinois Labor Relations Board (Board) in the above-captioned case alleging that the Village of Orland Park, (Respondent, Employer or Village), violated Sections 10(a)(1), (2), and (3) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), as amended (Act). 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 POSITION OF THE CHARGING PARTY

At all times material, McGreal has been a public employee within the meaning of Section 3(n) of the Act, employed by the Village on its Police Department as a Police Officer since 2005. The Village 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) and 20(b) of the Act. The Metropolitan Alliance of Police, Chapter #159 (MAP or Union) is a labor organization within the meaning of Section 3(i) of the Act, and the exclusive representative of a bargaining unit (Unit)

consisting of all peace officers employed by the Village below the rank of sergeant as certified by the Board on January 26, 1998, in Case No. S-RC-98-047. The Union and the Village are parties to a collective bargaining agreement (CBA) which provides for a grievance procedure culminating in arbitration.

McGreal was elected by the membership of MAP to serve as its Executive Secretary in 2008. At all times material, McGreal has been an active and visible advocate for MAP and has made Freedom of Information Act requests in connection to negotiations, filed grievances and has assisted other Unit employees in asserting their rights and protections under the CBA.

The genesis of the instant charge began in the fall of 2009 after the Village commenced disciplinary action against Charging Party alleging various and multiple acts of misconduct and insubordination. McGreal filed grievance number 2009-06 on December 18, 2009, claiming the Village had created a hostile work environment and was harassing him. Shortly thereafter, on December 24, 2009, the Union filed an unfair labor practice charge with the Board on behalf of Charging Party, Case No. S-CA-10-167, alleging the Village had retaliated against Charging Party because of his union and/or protected activities. On January 29, 2010, McGreal filed grievance number 2010-03 alleging his right to privacy was violated by the Village when it gathered and recorded his off-duty associations.

In April or May of 2010, the Village and the Union agreed to arbitrate the grievances and requested that the Federal Mediation and Conciliation Services (FMCS) provide them with a panel of arbitrators from which to select an arbitrator to hear the McGreal grievances. On or about May 5, 2010, McGreal filed grievance number 2010-05 alleging the Village violated the CBA by not allowing him an opportunity to discuss the Village's contemplated discipline during a pre-disciplinary meeting. On or about May 28, 2010, FMCS provided the Village and the

Union with a panel of arbitrators that included seven names from which the Village and the Union could select an arbitrator. FMCS also included a biographical sketch on each arbitrator on the panel, listing their areas of expertise, affiliations and professional associations.

In or around June of 2010, the Village commenced disciplinary action seeking to discharge Charging Party based upon numerous allegations of misconduct. On or about June 8, 2010, the Union amended the unfair labor practice charge to include retaliatory termination of Charging Party. On or about June 10, 2010, McGreal filed grievance number 2010-06 alleging that the disciplinary action taken against him was in retaliation for his Union activity. On July 22, 2010, the Executive Director of the Illinois Labor Relations Board deferred the unfair labor practice charge to arbitration in accordance with its long standing deferral practice.

In late August of 2010, the Union and the Village attorney exchanged emails in which they agreed that due to the overlap of issues presented by the deferral of the unfair labor practice charge and the numerous grievances, all the issues would be presented to the same arbitrator. In early September of 2010, the Village and the Union alternately struck the names of arbitrators from the FMCS panel provided to them in May of 2010, ultimately agreeing that the remaining name would be the arbitrator utilized to hear the grievances. On January 26, 2011, the arbitration hearing commenced before the Arbitrator.¹

Approximately nine months after the arbitration proceeding had commenced, on or about September or early October of 2011, McGreal commenced a background search on the Arbitrator's qualifications and eventually discovered he was not a member of the National

¹ In all, there were eventually sixteen (16) days of arbitration: January 26, 2011; February 8, 2011; July 6, 19, and 27, 2011; August 8, 2011; September 6, 2011; October 10 and 17, 2011; November 7, 2011; December 13, 2011; January 23, 2012; February 9, 2012; March 2, 2012; and April 10 and 23, 2012. There were 15 Joint exhibits, 70 Village exhibits and 96 Union exhibits entered into evidence during the arbitration.

Academy of Arbitrators (NAA), a contractual prerequisite for selection as an arbitrator in accordance with Article 5.3(a) of the CBA. Article 5.3(a) of the CBA reads:

The parties shall attempt to agree upon an arbitrator within five (5) business days after receipt of the notice of referral. In the event the parties are unable to agree upon an arbitrator within five (5) day period, the parties shall jointly request the Federal Mediation and Conciliation Service to submit a panel of five (5) arbitrators who shall be members of the National Academy of Arbitrators residing in the Midwest region. Each party retains the right to reject one panel in its entirety and request that a new panel be submitted. The party requesting arbitration shall strike the first name; the parties shall then strike alternatively until only one person remains.

On January 10, 2012, McGreal filed a grievance alleging the Arbitrator was not, nor had he ever been, a member of the NAA and therefore was contractually ineligible to serve as arbitrator for the grievances he had been arbitrating. The Village Police Commander, Thomas Kenealy, denied the grievance asserting McGreal was terminated from employment and therefore no longer an employee of the Village with standing to file the grievance. On February 1, 2012, MAP sent a letter to the Chief of Police and the Village Manager informing them to take no action on the grievance filed by McGreal because he was not an employee of the Village as of the date he was terminated in June of 2010, and therefore was not a current member of MAP afforded the protection of the CBA.

When the Union refused to allow McGreal to file a grievance seeking to dismiss the arbitrator, McGreal filed his own motion to stay the proceedings at the April 10, 2012 arbitration. The Village and the Union opposed the motion. The Arbitrator denied the motion and proceeded with the arbitration.

On November 14, 2012, the Arbitrator issued his decision finding the Village terminated McGreal for just cause. The Arbitrator denied the grievances and found the Village did not retaliate against McGreal due to his union and protected activity.

Charging Party alleges the Village violated Section 10(a)(1), (2) and (3) of the Act by fictitiously claiming that he or the Union waived jurisdiction allowing the Arbitrator to hear the grievances. Charging Party asserts that he did not waive the jurisdiction argument and he asserts there was no evidence that the Union waived jurisdiction. Charging Party seeks as relief that the Board find that the arbitrator lacked jurisdiction to hear the grievances and that the Board reopen the unfair labor practice in Case No. S-CA-10-167.

II. DISCUSSION AND ANALYSIS

Section 10(a)(1) forbids an employer from interfering with, restraining or coercing public employees in the exercise of the rights guaranteed under this Act. Although 10(a)(1) allegations do not generally require proof of an employer's illegal motive, when a charging party claims that the employer took an adverse action in retaliation for protected activity, the charging party must establish anti-union animus and the analysis tracks that used for a 10(a)(2) violation. Pace Suburban Bus Division v. Ill. Labor Relations Bd., 406 Ill. App. 3d 484, 494-95 (1st Dist. 2010).

Section 10(a)(2) forbids an employer from discriminating against employees to encourage or discourage their support for or membership in a labor organization. 5 ILCS 315/10(a)(2). 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.

Section 10(a)(3) prohibits discrimination against employees because they have filed or participated in Board proceedings. 5 ILCS 315/10(a)(3). To establish a violation of Section 10(a)(3), a charging party must essentially establish the same elements as a 10(a)(2) violation, showing that the employer took the adverse action against the charging party because of the charging party's involvement in a Board proceeding. Village of Ford Heights, 26 PERI ¶145 (IL LRB-SP 2010); Cook County Sheriff and Sheriff of Cook County, 6 PERI ¶3019 (IL LLRB 1990).

Charging Party has failed to raise an issue for hearing with respect to any of the alleged violations because he has provided insufficient evidence that the Respondent took an adverse action against him because of anti-union animus or because of his protected activity or because of his participation in Board proceedings.

There is no dispute that Article 5.3(a) of the CBA states that "the parties shall jointly request the Federal Mediation and Conciliation Service to submit a panel of five (5) arbitrators who shall be members of the National Academy of Arbitrators..." There is also no dispute that the Arbitrator presiding over the McGreal arbitration proceedings was not a member, nor did he ever claim to be a member, of the NAA. Apparently, the Village and the Union did not make NAA membership a pre-requisite when requesting a panel from the FMCS nor did they make NAA membership a requirement when selecting the Arbitrator to hear the McGreal grievances.² However, this is not a violation of the Act.

Section 7 of the Act provides that a public employer and the exclusive representative are to bargain collectively with respect to the terms of a collective bargaining agreement. The collective bargaining agreement sets forth the rights and duties of the parties covering the whole

² Of the seven arbitrators assigned to the panel for the McGreal grievances, five were members of the NAA and two were not.

employment relationship. At the heart of the collective bargaining agreement is the grievance procedure which provides the parties a mechanism for resolving disputes that arise under the agreement. The parties can negotiate specific provisions and procedural requirements to be included in their grievance procedure, and the parties can also mutually agree to waive those provisions and procedural requirements. In the instant case, the Village and the Union agreed to arbitrate the McGreal grievances and did so, albeit with an arbitrator that did not have membership in the NAA. The Arbitrator did not misrepresent his qualifications to the parties. Whether the Village and the Union consciously chose to waive the contractual NAA requirement or whether it was an oversight is immaterial. Ultimately, it was an issue of discretion as to how the Village and the Union administer the contract.

Charging Party is essentially asking the Board to enforce a specific provision in the CBA, but the Board has long held that it does not police collective bargaining agreements “to obtain specific enforcement of contract terms.” Village of Creve Couer, 3 PERI ¶2063 (IL SLRB 1987), supplemental decision at 4 PERI ¶2002 (IL SLRB 1987).

III. ORDER

Accordingly, the instant charge is hereby dismissed. The Charging Party may appeal this Dismissal to the Board any time within 10 days of service thereof. 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 at 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 Dismissal will be final.

Issued in Springfield, Illinois, this 30th day of April, 2013.

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**Melissa Mlynski
Executive Director**