

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

Lori Crafton,)	
)	
Charging Party)	
)	
and)	Case No. S-CA-14-076
)	
State of Illinois, Department of Central)	
Management Services (Corrections),)	
)	
Respondent)	

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

On March 17, 2014, Executive Director Melissa Mlynski issued a dismissal of an unfair labor practice charge filed by Charging Party, Lori Crafton, against Respondent, the State of Illinois, Department of Central Management Services (Department of Corrections). The charge, filed on December 2, 2013, alleged that Respondent violated Section 10(a) of the Illinois Public Labor Relations Act, 5 ILCS 315/10(a) (2012) (Act), by a course of conduct beginning with issuance of a three-day suspension of Charging Party in September 2012 and ending about July 12, 2013, with the denial of Charging Party's grievance regarding that suspension filed pursuant to Respondent's personnel rules.

Charging Party filed a timely appeal of the dismissal on March 27, 2014, pursuant to Section 1200.135 of the Board's Rules and Regulations. 80 Ill. Admin. Code §1200.135. Respondent filed no response. After a review of Charging Party's appeal, and based on our review of the Dismissal and the record, we affirm the Executive Director's Dismissal.

The Executive Director found that Charging Party was issued a three-day suspension in September 2012, for abuse of medical leave. A contractual grievance was filed on her behalf by her representative, the American Federation of State, County and Municipal Employees Council 31, which resulted in an agreement between AFSCME and Respondent to reduce the suspension to one day with back pay for two days. However, in December 2012, Charging Party filed a grievance under the procedures in Respondent's Personnel Code, 20 ILCS 415/1 et seq. (2012), claiming the suspension should be rescinded in its entirety because she was not given six days' notice as provided in the Personnel Code. See 80 Ill. Admin. Code §302.640. Respondent denied the Personnel Code grievance in a third step determination on July 12, 2013, at least in part because of the prior resolution of the contractual grievance filed by AFSCME.

The Executive Director dismissed as untimely all allegations raised by the charge that predated by more than six months the December 2, 2013, filing date of the charge. This is consistent with Section 11(a) of the Act which establishes such a six-month limitation.

The one remaining allegation concerned the Respondent's July 2013 denial of the Code grievance. The Executive Director found that this allegation was untimely to the extent that Respondent's denial related back to its initial September 2012 decision to discipline Charging Party and its November 2012 settlement of the contractual grievance. The Executive Director also addressed the allegation that the Personnel Code grievance might have been denied in retaliation for Charging Party having pursued the contractual grievance. In so doing, she determined that there was no evidence that Respondent denied the Code grievance to retaliate against Charging Party for having filed the contractual grievance, and that any reference to the contractual grievance in relationship to the Personnel Code grievance was merely to express that AFSCME and Respondent had already settled the disciplinary issue. The Executive Director

further noted that Charging Party appeared to be asserting that Respondent violated the Personnel Code, but found that enforcement of the Personnel Code is beyond the jurisdiction of this Board.

Charging Party's appeal does not contest the Executive Director's dismissal of any of the charges except that relating to Respondent's denial of the Personnel Code grievance. On that point we find the Executive Director correctly noted that this Board does not enforce the Personnel Code. 20 ILCS 415/3 (2012) (Department of Central Management Services administers the Personnel Code; Civil Service Commission created); 20 ILCS 415/10 (2012) (establishing duties and powers of the Civil Service Commission). However, Charging Party's appeal also asserts that the Respondent interfered with or restrained her from filing a Personnel Code grievance in alleged violation of the Act. That argument might have merit if the filing of a Personnel Code grievance was protected, concerted activity under the Act, but we fail to see how it could be deemed concerted since it was not action taken by or on behalf of two or more employees and does not concern any of the common interests of employees. City of Waukegan, 24 PERI ¶77 (IL LRB-SP 2008) (firefighter's charge against chief under union's constitution not concerted where no evidence employee was acting as spokesperson for a group of employees); Bd. of Educ. Schaumburg Cmty. Consol. School Dist. v. Ill. Educ. Labor Relations Bd., 247 Ill. App. 3d 439 (1st Dist. 1993) (applying similar provisions of the Illinois Educational Labor Relations Act and finding teacher's statements with respect to her evaluation were not concerted activity). While it is true that the filing of a contractual grievance is presumed concerted activity, this presumption arises from the fact that a contractual grievance is seeking to enforce an agreement bargained on behalf of employees as a collective group. The Personnel Code is not a collectively bargained agreement. Charging Party's Code grievance was filed by herself, on

behalf of only herself, and with the intent to affect only her individual interests. It was not concerted activity.

For these reasons, the Executive Director's dismissal is affirmed.

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/ Michael G. Coli

Michael G. Coli, Member

/s/ Albert Washington

Albert Washington, Member

Decision made at the State Panel's public meeting in Chicago, Illinois, on May 13, 2014; written decision issued at Chicago, Illinois, June 20, 2014.

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STATE PANEL**

Lori Crafton,)	
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Charging Party)	
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and)	Case No. S-CA-14-076
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State of Illinois, Department of Central Management Services (Corrections),)	
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Respondent)	

DISMISSAL

On December 2, 2013, Lori Crafton (Charging Party) filed a charge in Case No. S-CA-14-076 with the State Panel of the Illinois Labor Relations Board (Board), alleging that the State of Illinois, Department of Central Management Services (CMS), Department of Corrections, (Respondent or Employer) engaged in unfair labor practices within the meaning of Section 10(a) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012), *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 following reasons.

I. INVESTIGATORY FACTS AND POSITION OF THE CHARGING PARTY

Charging Party is employed by the Illinois Department of Corrections (IDOC) as an Executive II at the Menard Correctional Center and is a member of a bargaining unit represented by the American Federation of State, City and Municipal Employees, Council 31, (AFSCME). On or about August 27, 2012, Charging Party participated in a pre-disciplinary hearing regarding her alleged abuse of work time in relation to an injury on duty she suffered on or about January

19, 2012. Allegedly, Charging Party, on multiple dates, provided false doctor appointment times to her supervisors and documented false appointment times on Notification of Absence slips. She also allegedly requested time off for appointments that were either not scheduled or for which she failed to report.

On or about August 30, 2012, the IDOC Hearing Officer recommended a ten day suspension for these violations. On September 28, 2012, the Director of IDOC reduced that recommendation to a three day suspension. This suspension was to begin on September 30, 2012, with Crafton to return to work on October 3, 2012.

A grievance challenging this suspension was filed under the collective bargaining agreement between AFSCME and the State of Illinois. On November 29, 2012, the grievance was resolved at Step 3 of the grievance procedure. The parties agreed to reduce the level of discipline imposed to a one day suspension with back pay for the other two days.

On or about December 12, 2012, Charging Party filed a grievance under the CMS Personnel Rules, known as a “rules grievance,” alleging a violation of the Administrative Code Title 80, Subtitle B, Chapter 1, Part 302 Section 302.640 which, the Charging Party asserted, required a six working day notice of a suspension without pay. Charging Party claimed that she was not provided six working days notice before her suspension. The rules grievance was denied at Steps 1 and 2 and then, on or about July 12, 2013, Edward Jackson, with IDOC Labor Relations, denied the rules grievance at Step 3. It appears that this denial was based, at least in part, on the fact that this issue had already been grieved and resolved via the contractual grievance procedure.¹

¹ Another basis for the Respondent’s denial may have been timeliness. The rules grievance procedure requires that the grieving employee shall present the grievance orally to their immediate supervisor within five scheduled working days after learning of the circumstances or condition which gave rise to the grievance. As noted above, Charging Party was disciplined in September of 2012, but did not file her rules grievance until December of 2012.

On December 2, 2013, Crafton filed the instant unfair labor practice charge alleging that the Respondent violated the Personnel Code by not providing her six working days of notice prior to issuing her the three day suspension in September of 2012 and by denying her rules grievance on this issue.

II. DISCUSSION AND ANALYSIS

The first issue that must be addressed is whether this charge was timely filed. Section 11(a) of the Act provides that “no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of a charge with the Board and the service of a copy thereof upon the person against whom the charge was made.” 5 ILCS 315/11 (2012). The six month period begins to run once Charging Party has knowledge of the alleged unlawful conduct, or reasonably should have known of the conduct. Village of Wilmette, 20 PERI ¶85 (IL LRB-SP 2004); Chicago Transit Authority, 16 PERI ¶3013 (IL LLRB 2000), citing Teamsters (Zaccaro), 14 PERI ¶3014 (IL LLRB 1998) aff’d by unpub. order, 14 PERI ¶4003 (1st Dist. 1999); Illinois Department of Central Management Services, 16 PERI ¶2011 (IL SLRB 2000) citing Moore v. Illinois State Labor Relations Board, 206 Ill. App. 3d 327, 335, 564 N.E. 2d 213, 7 PERI ¶4007 (4th District 1990); American Federation of State, County and Municipal Employees, Local 3486 (Pierce), 15 PERI ¶2026 (IL SLRB 1999).

To the extent that the Charging Party is challenging the three day suspension that was imposed in September of 2012, this unfair labor practice charge, which was filed in December of 2013, is clearly outside the six month statute of limitations. Therefore, this aspect of the charge must be dismissed as untimely.

Charging Party is also alleging that the Respondent violated the Act when it denied her rules grievance on or about July 12, 2013. To the extent that the denial of the rules grievance

was merely the Employer declining to review and/or reverse its initial disciplinary action taken in September of 2012, I would generally find this aspect of the charge is also untimely.

However, in this case, the Charging Party also seems to be alleging that the Respondent violated the Act by the manner in which it denied the rules grievance. Specifically, Charging Party alleges that the Respondent violated the Act when it cited her protected activity (i.e. filing a contractual grievance) as a reason for denying her rules grievance. While I deem this aspect of the charge to be timely, it still fails to raise an issue for hearing.

Section 10(a)(1) provides, in relevant part, that it shall be an unfair labor practice for an employer or its agents to interfere with, restrain, or coerce public employees in the exercise of the rights guaranteed in the Act or to dominate or interfere with the formation, existence, or administration of any labor organization. When an employee claims that the employer took action in retaliation for protected activity, the 10(a)(1) analysis tracks that of a 10(a)(2) violation. See Chicago Park District (Jones), 9 PERI ¶3016 (IL LLRB 1993); Chicago Park District (Rundle), 8 PERI ¶3017; Chicago Park District, 7 PERI ¶3021; Chicago Housing Authority, 6 PERI ¶3013 (IL LLRB 1990).

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)).

In this case, there is simply no evidence that the Respondent denied the rules grievance in retaliation for the Charging Party's protected activity. Instead, the Respondent appears to have cited her protected activity (the contractual grievance) merely to demonstrate that AFSCME and the Respondent had already settled the disciplinary matter – in other words, IDOC considered this matter to be resolved. Charging Party may have been dissatisfied with the settlement of the contractual grievance, which prompted her to file the rules grievance. However, there is no evidence that the Respondent violated the Act by merely referencing the settlement of the contractual grievance as a basis for denying the rules grievance.

Moreover, it seems that the entire crux of Charging Party's allegations in this case is her belief that the Respondent violated the Personnel Code. Even if considered timely, this allegation is beyond the jurisdiction of the Board, unless the Charging Party can show that the Respondent took action in retaliation for the Charging Party exercising her rights under the Act. No such evidence was presented in this case.

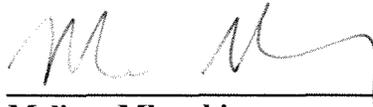
III. ORDER

Accordingly, the instant charge is hereby dismissed. The Charging Party may appeal this dismissal to the Board any time within 10 days of service 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 reason 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 Chicago, Illinois, this 17th day of March, 2014.

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**Melissa Mlynski
Executive Director**