

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

James Young,)	
)	
Charging Party)	
)	
and)	Case No. S-CA-14-107
)	
Village of University Park,)	
)	
Respondent)	

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

On December 1, 2014, Executive Director Melissa Mlynski partially dismissed an amended unfair labor practice charge filed by James Young (Young or Charging Party) in the above-captioned case.¹ Young alleged that the Village of University Park (Village or Respondent) violated Section 10(a) of the Illinois Public Labor Relations Act, 5 ILCS 315/10(a) (2012), by suspending him in retaliation for his union activity. Young also grieved his suspension, and his Union, the American Federation of State, County, and Municipal Employees, Council 31 (AFSCME or Union), advanced the grievance to arbitration. After reviewing Young's arbitration award, the Executive Director determined that the award sufficiently addressed Young's retaliation allegations and dismissed the suspension portion of Young's charge.

Young filed a timely appeal of the Executive Director's Partial Dismissal pursuant to Section 1200.135(a) of the Board's Rules and Regulations, 80 Ill. Adm. Code § 1200.135(a).

¹ The Charging Party filed two amended charges. The first amended charge alleged additional facts in support of his initial charge. The second amended charge alleged a new violation of the Act. The Executive Director issued a Complaint for Hearing regarding the new violation on July 29, 2014.

Young essentially argues that deferral to the arbitration award is not appropriate because the arbitrator had not been presented with and had not considered whether the Village had suspended him because of his union activity. The Respondent did not file a response to Young's appeal. After reviewing the record and appeal, we affirm the Executive Director's Partial Dismissal.

When deciding whether post-arbitral deferral is appropriate, this Board follows the standards set forth in Spielberg Mfg. Co., 112 NLRB 1080 (1955). Under Spielberg, deferral to an arbitration award is proper when (1) the unfair labor practice issue has been presented to and considered by the arbitrator; (2) the arbitration proceedings were fair and regular; (3) "all parties to the arbitration agreed to be bound by the award; and [(4) the award is] not clearly repugnant to the purposes of the Act." Chief Judge of the 16th Judicial Circuit, 29 PERI ¶ 50 (IL LRB-SP 2012), aff'd sub nom. Moehring v. Illinois Labor Relations Bd., State Panel, 2013 IL App (2d) 120342. In this case, only the first element is at issue. We agree with the Executive Director that the arbitrator was presented with and considered Young's retaliation allegation. Not only was evidence regarding this issue presented to the arbitrator, she specifically concluded that "[t]here [was] no basis to support the allegation that the assessment of discipline in this case was discriminatory."

Accordingly, we find that deferral to the arbitration award is appropriate and affirm the Executive Director's Partial Dismissal.

BY THE ILLINOIS LABOR RELATIONS BOARD, STATE PANEL

/s/ John J. Hartnett

John J. Hartnett, Chairman

/s/ James Q. Brennwald

James Q. Brennwald, Member

/s/ Albert Washington

Albert Washington, Member

Decision made at the State Panel's public meeting held in Chicago, Illinois on March 10, 2015;
written decision issued in Chicago, Illinois on March 13, 2015.

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STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

James Young,)
)
 Charging Party)
)
 and) Case No. S-CA-14-107
)
 Village of University Park,)
)
 Respondent)

PARTIAL DISMISSAL

On December 24, 2013, James W. Young (Charging Party) filed an unfair labor practice charge with the State Panel of the Illinois Labor Relations Board (Board) in Case No. S-CA-14-107, alleging that the Village of University Park (Respondent) violated Section 10(a) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2012), *as amended*. On January 15, 2014, Charging Party amended his charge. On April 24, 2014, I issued an Order Holding Case in Abeyance pending the resolution of a pending grievance.¹ After an investigation conducted in accordance with Section 11 of the Act, I determined that a portion of this charge fails to raise an issue of law or fact sufficient to warrant a hearing and hereby issue this partial dismissal for the reasons stated below.

I. INVESTIGATORY FACTS

Charging Party is employed as a part-time police officer by the Respondent and is a member of a bargaining unit that is represented by the American Federation of State County and

¹ After issuance of the abeyance order, the Charging Party amended his charge for a second time on May 10, 2014. In this second amendment, Charging Party asserted that the Respondent retaliated against him when it hired a part-time police officer into a full-time police officer position. On July 29, 2014, I issued a Complaint on that portion of the charge. The Complaint is currently pending before Administrative Law Judge Deena Sanceda, and a hearing is scheduled for February of 2015. This Partial Dismissal is intended to address all of the remaining allegations raised in the charge.

Municipal Employees, Local 3837 (AFSCME or Union). The Respondent and AFSCME are parties to a collective bargaining agreement that contains a grievance procedure that culminates in final and binding arbitration. Charging Party is also a certified union steward for Local 3837.

As set forth more fully in the Order Holding Case in Abeyance, Charging Party asserts that he was suspended indefinitely in retaliation for his activity as a union steward. Charging Party asserts that he has been a vocal, active and aggressive supporter of Union rights and management compliance with the collective bargaining agreement in the workplace. As noted in the Order Holding Case in Abeyance, a grievance was filed challenging the suspension.

On September 28, 2014, Arbitrator Margo Newman issued a "Decision and Award of Arbitration" regarding the Charging Party's grievance. The grievance was sustained in-part and dismissed in part. Arbitrator Newman reduced the suspension to a "written reprimand" and directed the employer (Respondent) to make Young (Charging Party) whole for any lost wages and benefits associated with the suspension. Significantly, Arbitrator Newman ruled that there was no evidence presented to support a finding that Young was disciplined, in whole or in part, as a result of his union activities.

II. DISCUSSION AND ANALYSIS

I find that the portion of this charge that was held in abeyance should be dismissed, as the arbitration award is dispositive of this portion of the unfair labor practice charge. While the arbitrator rejected the suspension, she did find cause to issue Young a written reprimand. In the charge, Young asserts that he was disciplined in retaliation for his union activity. In her arbitration award, Arbitrator Newman addresses that point as follows:

The next question raised in an evaluation of just cause, is whether the penalty assessed against grievant was arbitrary, capricious or unreasonable. I first note that, although this record does not contain any documents concerning grievant's unfair labor practice charge or the IPLRB deferral of the matter, the parties have mentioned this issue in this case. There was no evidence presented to support a finding that grievant

was disciplined, in whole or in part, as a result of his Union activities. Grievant himself failed to link his conduct as a Union steward with the cause of this discipline, and testified that he just wanted to be treated fairly and given the appropriate due process afforded him by the contract. In fact, there was nothing in this record indicating what grievant's Union activities were, other than a passing reference to the fact that he was a Union steward. There is no basis to support the allegation that the assessment of discipline in this case was discriminatory.

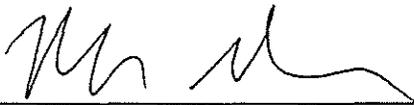
In light of this ruling, there are no remaining issues on this portion of the charge that require a hearing before the Board.

III. ORDER

The portion of this charge as identified above is 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 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 1st day of December, 2014.

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Melissa Mlynski, Executive Director