STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

American Federation of State, County and Municipal Employees,	)	
Charging Party,	)	
and	)	Case No. S-CA-14-123
Will County Circuit Clerk,	)	
Respondent.	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

On April 29, 2016, Administrative Law Judge Deena Sanceda (ALJ) issued a Recommended Decision and Order (RDO) in the above-captioned matter, concluding that Respondent, Will County Circuit Clerk, (Respondent or Employer) violated Sections 10(a)(4) and (1) of the Illinois Public Labor Relations Act, 5 ILCS 315, *as amended* (Act) when it terminated the employment of probationary employee, Cheryl Hajewski (Hajewski).

The Respondent timely filed exceptions to the RDO, pursuant to Section 1300.135(b) of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200 through 1300. The Charging Party, American Federation of State, County and Municipal Employees, Council 31 (AFSCME or Union) filed a timely response.

In brief summary, AFSCME asserts that Respondent terminated Hajewski in retaliation for her participation in a strike and to discourage union support, while Respondent contends that it decided prior to the strike to terminate Hajewski's probationary employment because Hajewski had demonstrated an inability to grasp basic functions of her position and displayed a disregard for Respondent's workplace policies in the first few weeks of her employment.

After reviewing the record, exceptions and response, we reject the ALJ's determination that the Employer violated the Act when it terminated Hajewski, for the reasons explained more fully herein.

Summary of Facts

The ALJ's comprehensive recitation of the facts is set out in great detail in the RDO. We begin with a very truncated summary of the most relevant portions of the underlying facts.[1]

The Clerk's Office and the Parties' Bargaining History

Will County Circuit Clerk Pamela McGuire (McGuire or Clerk) heads the Clerk's Office, which is responsible for keeping the records for the Circuit Court of Will County (Circuit Court). The Clerk's Office has a total of four (4) facilities, including the Main Court and the Annex; both house courtrooms and offices. These structures are located on diagonal corners of the same intersection. The Clerk's Office employs 171 employees, 132 are bargaining unit members; approximately 10-13 employees are assigned to the Annex.

Throughout the relevant time period, AFSCME was the exclusive representative for a bargaining unit that included Respondent's employees in the title of Deputy Court Clerk (Dep. Clerk or Minute Clerk). Charging Party and Respondent had been parties to a collective

[1] Notably, at the beginning the section of the RDO titled *Investigatory Facts*, the ALJ inserted the following at footnote 1:

> Cheryl Hajewski, Jessica Baasch, and Sara Dankowski, Nancy Peet and Joe Pluger testified on behalf of the Union. Kim Hasbrouk, Vanessa Garcia, and Leslie RienzieBarry testified on behalf of, or as agents of the Circuit Clerk. Based upon my observations and review of the record, I find that Hajewski, Garcia, Rienzie-Barry are not entirely credible witnesses, and only credit their testimonies regarding uncontested background information; or when corroborated by a credible witness or credible documentation. For those same reasons, I find Baasch, Dankowski, Peet, Pluger and Hasbrouk to be credible witnesses, and resolve my findings in favor of their testimonies when in conflict with Hajewski's, Garcia's or Rienzi-Barry's testimonies.

bargaining agreement for the unit that was in effect from between December 1, 2009 through November 30, 2012. The unit went out on strike on November 18, 2014; the strike ended after the parties successfully negotiated a successor agreement in effect through November 30, 2016, and bargaining unit members returned to work on December 5, 2014.[2]

Minute Clerks are placed on a 6-month probation during which the Clerk may terminate their employment with or without cause. At the time of the strike, the Clerk's Office had a total of nine (9) probationary employees, five (5) of these went out on strike while four (4) crossed the picket line. Respondent terminated Hajewski's probationary employment on December 6, 2014. Hajewski was the only probationary employee terminated after the strike. No other bargaining unit member was disciplined in the aftermath of the strike.

Hajewski's Employment

Hajewski began her probationary employment on October 28, 2014, and was assigned to the Annex. Following a day of orientation conducted by Human Resources staffer, Kim Hasbrouk (Hasbrouk), which included a review of the Respondent's policies, and Hajewski's observing various court calls, Vanessa Garcia (Garcia), the supervisor of the Annex, began training Hajewski on various tasks performed by Minute Clerks. Typically, when Minute Clerks are trained, their supervisor is the individual who determines whether the employee is sufficiently completing the probationary period. Prior to Hajewski, Garcia, trained 20-25 other Minute Clerks.

The Clerk's Office has various workplace polices including ones addressing attendance/tardiness, electronic device/cell phone use and food in the workplace. According to

[2] The Union represents approximately 1200 employees in several bargaining units at twenty-seven locations in Will County. Employees covered under all but one of those AFSCME-represented units participated in the strike.

Garcia's testimony, during the second week of employment, beginning November 4, Hajewski violated the cell phone policy by taking her phone to court. Garcia became aware after-the-fact when she and Garcia were leaving the court room and Garcia asked her the time. Hajewski looked at her phone and answered Garcia immediately, leading Garcia to conclude the phone had been on in court because there was not sufficient time between Garcia's question and Hajewski's answer for the phone to power up.

On November 6, Hajewski was thirty-four minutes late on account of her husband disappearing overnight. Following this incident, Garcia reminded Hajewski to avoid any further incidents because attendance is watched very carefully during the probationary period, something that Hasbrouk also had advised her during orientation. Two days later on November 8, Garcia observed Hajewski's phone vibrating on her desk and Garcia reminded her to turn off the phone and put it away. Then on November 12, Hajewski informed Garcia that she needed to leave work early for an afternoon doctor's appointment. Garcia testified that this was the first time Hajewski had informed her of this need to be absent, but Hajewski testified that she had advised Garcia on her first day of work and again on November 11. However, Garcia contended that it would have been impossible for Hajewski to have done so because November 11 was a court holiday.

As to Hajewski's performance, Respondent notes an incident on November 14 when Hajewski disregarded Garcia's admonition that the Minute Clerk's first priority was to devote her full attention to the judge while court was in session. Instead, Hajewski moved off to the side to put numbers on court papers rather that give her full attention to documenting what was happening in court. Garcia testified that when she raised this constructive criticism, Hajewski became flustered and agitated.

Following the November 14 incident, Garcia contacted Human Resources Director Leslie Rienzie-Barry (Rienzie-Barry) and advised her that she did not believe Hajewski would successfully complete her probationary period and should be terminated because there were "too many red flags." Respondent contends that the decision to terminate Hajewski was made on the afternoon of November 14, but Rienzie-Barry could not execute the decision at that time because she was in negotiations that afternoon and preparing for the threatened strike the next day.

During and After the Strike

AFSCME took its members out on strike on Monday November 18 and Hajewski participated on the picket line. On November 21, strikers marched several blocks to the County Building to attend a County Board meeting. Hajewski testified that she led chants that day at the County Building and thereafter on the picket lines. Union witnesses testified that there was no chanting in the Board Meeting. Rienzie-Barry denied being at the Board meeting; however, Union witness, Jessica Baasch (Baasch) contradicted this, testifying that she saw Rienzie-Barry at the back of the Board Room.

Hajewski testified that occasionally while she was leading chants, she saw Garcia or Rienzie-Barry. No AFSCME witness corroborated Hajewski's testimony and both Garcia and Rienzie-Barry deny ever seeing Hajewski on the picket line or being aware that she was leading chants during the strike. Rather, Garcia and Rienzie-Barry testified that during the strike they both worked long hours arriving at work before the pickets began and leaving after they had concluded for the day. Both Rienzie-Barry and Baasch testified that it was difficult to identify people on the picket line because of how bundled up they were in the cold.

Hajewski also posted on the Union's private Facebook page, commenting about the strike and referring to non-striking employees as "scabs." In particular, on November 26, Hajewski

posted about calling co-worker Julie Schedin (Schedin) a "scab" after seeing her cross the picket line. Several Union witnesses testified to the highly restricted process for gaining access to the Union's Facebook page during the strike, which required permission from the group administrator, who verified that each person getting access was a participating striker. If the group administrator became aware that a striking employee crossed the picket line, he revoked the employee's access to the page.

Another non-striking employee posted to her own Facebook page, referring to the strikers as "animals." Striking employees that were Facebook friends with her printed and distributed that post to a manager in the Clerk's Office and employees on the picket line.

On November 29, Garcia sent Rienzie-Barry an email that she characterized as a follow up to their November 14 discussion regarding Hajewski's termination. Garcia testified that the November 29 was the day after Thanksgiving and her first opportunity to address this matter. The email did not include Hajewski's performance issues on November 14, and Garcia could not explain why she omitted that information from the email.

Everyone returned from the strike on December 5. On that day, Schedin, the only Annex employee to cross the picket line, went to Garcia's office in tears because the returning strikers were excluding her. Garcia reported the conversation to Rienzie-Barry who indicated that she would speak to Schedin the following day when Rienzie–Barry would be at the Annex. On December 6, Rienzie-Barry went to the Annex to conduct a *welcome back* meeting. Prior to the meeting, she spoke with Schedin to inquire about how she was doing and advised her that, based on information from Union officials, the Union was not hosting a formal Christmas party but Shcedin was not invited to an informal gathering planned by some members who had participated in the strike.

Also on December 6, Rienzie-Barry informed Hajewski that she was being terminated for the rules violations and performance issues that occurred during the several weeks of Hajewski's employment that pre-dated the strike. Hajewski testified that Rienzie-Barry told her that one of the reasons she was being terminated was that she had been rude to a judge in an encounter that had occurred on December 5. Rienzie-Barry denied having said this; however, in a letter she sent in response to the Union's inquiry about Hajewski's termination, Rienzie-Barry made reference to Hajewski's having been disrespectful to a judge.

All other probationary employees who went on strike successfully completed their probation periods. None of the returning employees was disciplined since the strike.

The ALJ's Analysis

The ALJ concluded that Respondent violated Sections 10(a)(2) and (1) of the Act when it terminated Hajewski because of her involvement in the strike and for her engaging in strike-related protected union activity.

The ALJ acknowledged that a public employer commits an unfair labor practice in violation of the Section 10(a)(2) when it discriminates 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. The ALJ recognized that Charging Party had the burden to prove that Respondent intended to discourage union membership or support, and concluded that it terminated Hajewski to achieve that objective.

Citing well-established Board precedent, the ALJ identified the elements that a charging party needs to prove to establish its *prima facie case* of discriminatory termination as follows: 1) the employee engaged in protected union activity; 2) the employer was aware of the employee's protected activity; 3) the employer terminated the employee; and 4) the employer was motivated

in whole or in part by the employee's protected conduct or by its anti-union animus, with the intent to discourage or encourage union membership.[3] In addition, satisfying the fourth element requires that charging party establish a causal link between the employee's union activity and the termination such that the protected activity was a substantial or motivating factor in the termination.[4]

Further, once a charging party establishes its *prima facie* case, the burden shifts to the respondent to demonstrate that it would have terminated the employee for legitimate business reasons even absent the discriminatory motives.[5] It is insufficient for the employer to simply proffer a legitimate business reason; the fact-finder must determine whether the proffered reason is *bona fide* or merely pretextual, *i.e.*, that the employer did not actually rely on the proffered reason. A determination of pretext resolves the questions in favor of the charging party; however, if the fact-finder determines that the employer advanced and relied upon a legitimate reason for the termination, the question is characterized as dual motive, and the analysis continues requiring the employer to demonstrate by a preponderance of the evidence that it would have terminated the employee irrespective of the protected activities.[5] Applying the above-summarized analytical framework to her findings of fact, the ALJ first determined that the Union proved its *prima facie* case that Respondent terminated Hajewski in retaliation for what the ALJ characterized as Hajewski's "active and visible role in the strike." The ALJ concluded that Hajewski engaged in protected activity by participating in the strike, leading chants and posting to the Union's Facebook page. Further, the ALJ flatly rejected the Respondent's

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[3] *See Sheriff of Jackson Cnty. v. Illinois State Labor Rel. Bd.*, 302 Ill. App. 3d 411 414 (5th Dist.1999); *City of Elmhurst*, 17 PERI ¶ 2040 (IL LRB-SP 2001); *Chicago Transit Auth.*, 30 PERI ¶ 9 (IL LRB-LP 2013).

[4] *See City of Burbank v. Ill. State Labor Bd.*, 128 2d 335, 346 (1989); *Pace Suburban Bus, Div. of Reg'l Transp. Auth. v. Ill. Labor Rel. Bd.*, 406 Ill. App. 3d 484, 495 (1st Dist. 2010). [5] *City of Burbank*, 128 Ill. 2d at 346.

[5] *Id.*

contention that the decision to terminate Hajewski occurred on November 14, before she engaged in any protected activity. Among other things, the ALJ did not credit Rienzie-Barry's letter to the Union that referenced her notes about the conversation with Garcia on November 14 because the notes themselves were not in the record and the record did not indicate whether Rienzie-Barry made the notes at the time of her discussion with Garcia or at some later time.

The ALJ concluded that the earliest credible documentation relating to Hajewski's termination was Garcia's November 29 email, which does not reflect that the decision to terminate Hajewski was made on November 14.

Further, the ALJ concluded that Rienzie-Barry was aware of Hajewski's protected activity before the decision to terminate her because she was presumed to know that Hajewski was participating in the strike and never denied having such knowledge. The ALJ also concluded that Rienzi-Barry knew of Hajewski's activity on the picket line through the "small plant" doctrine, which allows for the inference that co-workers who witness the employee's union activity informed the employer. The ALJ concluded that the small plant doctrine was applicable in this context because only thirteen employees reported to the Annex. She concluded further that it was likely that Schedin witnessed Hajewski leading the chants. She imputed Schedin's presumed knowledge to Garcia and, in turn, imputed Garcia's knowledge to RienzieBarry.

Similarly, the ALJ inferred that both Garcia and Rienzie-Barry were aware of Hajewski's Facebook posts because Rienzie-Barry demonstrated knowledge of some posts at the December 5 welcome back meeting. The ALJ concluded that there was no reason to believe that Rienzie-Barry' knowledge was limited to those posts.

As to discriminatory motive, the ALJ found that the Respondent terminated Hajewski at least in part, because of her protected activity. The ALJ made this determination based on the following circumstantial evidence: 1) the suspicious timing of her termination on the heels of her returning from visible participation in the strike and after posting on the Unit's Facebook page; 2) that Rienzie-Barry had displayed open hostility for the Union when she required employees to remove Union stickers from their badges and when she demonstrated sympathy for Schedin, who had been a target of Hajewski's protected activity when Hajewski called her a "scab;" 3) that Respondent offered inconsistent explanations for terminating Hajewski in that Garcia's and Rienzie-Barry's testimonies were inconsistent about whether they terminated Hajewski for her performance through December 6 or only for her first two weeks of employment; 4) while Hajewski did violate Respondent's policy by bringing her cell phone to court, Respondent did not have a policy of terminating probationary employees for a single violation, and so Respondent treated Hajewski less favorably than it treated other probationary employees; and 5) Respondent treated more favorably other probationary employees who went on strike but were not as active as Hajewski because she was the only probationary employee who was terminated. Ultimately, the ALJ determined that the reason for Hajewski's termination was her active role in the strike, and that Respondent terminated her in order to encourage or discourage membership in or other support for any union.

Respondent's Exceptions

As an initial matter, Respondent argues that AFSCME did not establish its *prima facie* case that Respondent violated Sections 10(a)(2) and (1), and that the ALJ placed the burden on Respondent to prove that it acted lawfully rather than requiring the Union to prove that Respondent acted unlawfully.

Over 1,200 County employees were on strike with Hajewski, including other probationary employees from the Clerk's Office, none of whom was terminated following the strike. Respondent contends that the question formed by the ALJ was whether Garcia and Rienzie-Barry knew that Hajewski played an "enhanced role" in the strike, *i.e.*, leading chants and posting to the Union's Facebook page. The Respondent contends that the Charging Party produced no evidence at hearing that would support such a finding and that the ALJ's "must have known" conclusions were both erroneous and illogical.

As to the ALJ's conclusion that Garcia and Rienzie-Barry must have known of Hajewski's leading chants on the picket line, Respondent argues that only Hajewski testified to ever having seen Garcia and Rienzie-Barry while she was on the picket line, and that this testimony is not corroborated by any other Union witness. By contrast, both Garcia and Rienzie-Barry testified that during the strike they arrived at work before the pickets and left after the pickets were gone for the day. Both Rienzie-Barry and Union witness Baasch testified that it was difficult to identify strikers on the picket line because they were so bundled up in the cold.

Hajewski testified that she began leading chants on the day of the County Board Meeting. While Rienzie-Barry denied having been at the Board meeting, Baasch testified that she had seen Rienzie-Barry at the back of the room. However, Respondent argues that even if that were true, it does not operate to establish that Rienzie-Barry knew of Hajewski's conduct with respect to leading chants, because the Union's witnesses testified there was no chanting during the Board Meeting.

The Respondent also contends that the ALJ improperly applied the "small plant" doctrine where, as here, Hajewski's activities took place in the context of a County-wide strike involving approximately 1,200 employees. As the situation did not involve a small number of striking

employees and Hajewski's conduct was not so brazen as to lead to a logical presumption that the Respondent had knowledge of those actions, Respondent maintains that the small plant doctrine cannot be applied to establish its knowledge of Hajewski's enhanced activities.

Further, Respondent argues that the ALJ improperly presumed that Schedin had knowledge of Hajewski's activities on the picket line, imputed that knowledge to Garcia and further imputed Garcia's purported knowledge to Rienzie-Barry. Respondent notes that Hajewski did not begin to lead chants until the day of the Board Meeting on November 21, and that Schedin only participated in the strike through November 22, leaving, at best, an overlapping two-days during which Hajewski was leading chants and Schedin was participating in the strike. However, Charging Party presented no evidence that Schedin knew of Hajewski's activities on the picket line.

Respondent also argues that the ALJ's determination that Rienzie-Barry was aware of Hajewski's posting on the Union's restricted Facebook page was not supported by the evidence, especially in view of the repeated testimony from Union witnesses as to the extensive security measures taken to ensure that only bargaining unit members who were participating in the strike were able to access the Union's closed Facebook page. In particular, Respondent rejected the ALJ's determination that because Respondent had knowledge of something posted on the Union's Facebook page that had been printed and circulated by the Union, Respondent must have had access to everything on the Facebook page. Similarly, Respondent argues that there is an absence of evidence demonstrating that Schedin had any knowledge of Hajewski's Facebook posts calling Schedin a "scab," much less evidence to warrant imputing such knowledge to Garcia and then to Rienzie-Barry.

Respondent further excepts to the ALJ's determination that the Union successfully established union animus. Among other things, the Respondent specifically rejects the ALJ's determination that Rienzie-Barry's show of compassion to Schedin, who was upset over being alienated by her co-workers, evinces union animus, particularly where there is no evidence that Schedin knew, much less was upset, about Hajewski's Facebook posts.

Respondent also challenges the ALJ's determination that Respondent offered inconsistent reasons for terminating Hajewski's employment evincing union animus. Respondent argued that it consistently pointed to Hajewski's multiple policy violations (cell phone use and attendance/tardiness) within the first few weeks of her employment. Further, Respondent contends that Garcia did not draft the email to Rienzie-Barry until November 29 because Respondent was in the middle of a County-wide strike, and Garcia was working twelve (12) hour days. November 29, a court holiday, was Garcia's first opportunity to catch up on outstanding matters.

Also, Respondent notes that the ALJ failed to explain why she determined that Garcia and Rienzie-Barry were not credible witnesses, and the ALJ improperly credited Hajewski's version of why she was fired over Rienzie-Barry, notwithstanding that the ALJ also determined that Hajewski was not a credible witness. The Respondent argues that this credibility determination in favor of Hajewski is even more improper inasmuch as Hajewski had testified untruthfully when she claimed she had communicated with Garcia on November 11 to confirm her upcoming absence, which the ALJ recognized was a court holiday.

Finally, Respondent argues that even if Charging Party had established its *prima facie*, the ALJ incorrectly concluded that Respondent had not rebutted Charging Party's *prima facie* case and did not provide legitimate non-discriminatory reasons for terminating Hajewski's

employment. The ALJ found that the reasons for Hajewski's termination were merely a recitation of Respondent's defense and, without addressing the short period of Hajewski's employment in relation to the violations, the ALJ erroneously concluded that the Respondent's stated reason for discharging Hajewski was implausible.

Analysis

Clearly the ALJ has prepared a very detailed and comprehensive RDO. However, in a number of key instances, the ALJ's conclusions are not based on evidence *per se* but rather on inferences that she drew from what evidence was presented. We agree with Respondent's argument that these inferences were improperly drawn, and without them, Charging Party's *prima facie* case must fail.

Respondent has advanced particularly persuasive arguments with respect to the ALJ's determination that Respondent knew that Hajewski had engaged in protected activity beyond simply joining the strike with hundreds of other unit members, as this determination is based only on an inference drawn and in the absence of any credible testimony that puts Garcia and/or Rienzie-Barry in proximity to Hajewski at any time when she was actually leading chants during the strike.

Similarly, the ALJ's inference that Rienzie-Barry must have had access to all Union Facebook posts because she had access to some that had been printed out and distributed by members, is strained in light of the uncontroverted testimony the Union proffered about the intense security protocols relating to access to the Union's Facebook page. Further, while the Board historically has given great deference to an administrative law judge's credibility determinations, such determinations are not beyond Board review. In this case, meaningful review of those credibility determinations is impeded because the ALJ did not clearly articulate

the bases for her credibility determinations that were identified so clearly in the footnote inserted at the beginning the RDO. Thus, while the ALJ has made clear those witnesses whom she deems credible and those she does not, the bases for those determinations are not sufficiently clear. Accordingly, we do not defer to those credibility determinations in the absence of a fuller explanation in the RDO.

As Respondent correctly points out, the burden of proving its *prima facie* case is on the Charging Party, but the inferences the ALJ has drawn in favor of the Union in these several critical ways, operate to improperly relieve the Charging Party from the obligation to prove its case and shifts the burden to Respondent to prove that certain events did not happen. In sum, we differ with the ALJ's analysis, particularly with respect to inferences drawn about the Respondent's knowledge of Hajewski's "enhanced protected" activities in the absence of clear affirmative evidence establishing the elements of a Section 10(a)(2) violation; therefore, we reject the RDO and dismiss the complaint.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ John J. Hartnett
John J. Hartnett, Chairman

/s/ Michael G. Coli
Michael G. Coli, Member

/s/ John R. Samolis
John R. Samolis, Member

/s/ Keith A. Snyder
Keith A. Snyder, Member

/s/ Albert Washington
Albert Washington, Member

Decision made at the State Panel's public meeting in Chicago, Illinois on July 7, 2016; written decision issued in Chicago, Illinois on October 3, 2016.[6]

[6] The initially issued decision contained the incorrect case number in the heading. A corrected copy was issued October 4, 2016.

STATE OF ILLINOIS
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American Federation of State, County, and Municipal Employees, Council 31,	)	
Charging Party	)	Case No. S-CA-14-123
and	)	
Will County Circuit Clerk,	)	
Respondent	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On January 17, 2014, Charging Party, American Federation of State, County, and Municipal Employees, Council 31, ("Union"), filed an unfair labor charge with the State Panel of of the Illinois Labor Relations Board ("Board"), alleging that Respondent, Will County Circuit Clerk ("Circuit Clerk"), violated Sections 10(a)(2) and (1) of the Illinois Public Relations Act ("Act"), 5 ILCS 315 (2014), as amended. The charges were investigaged in accordance with Section 11 of the Act, and on March 22, 2014, the Board's Executive Director issued a Complaint for Hearing. The case was heard in Chicago, Illinois, on November 19 and 20, 2014. At the hearing, both parties were given an opportunity to participate, adduce relevant evidence, examine witnesses, argue orally, and file written briefs. After full consideration of the parties' stipulations, motions, evidence, arguments and briefs, and upon the entire record of the case, I recommend the following:

I. PRELIMINARY FINDINGS

The parties stipulate, and I find that:

1. At all times material, Respondent has been a public employer within the meaning of Section 3(o) of the Act.

2. At all times material, Respondent has been a unit of government subject to the jurisdiction of the State Panel of the Board, pursuant to Section 5(a-5) and Section 20(b) of the Act.

3. At all times material, Charging Party has been a labor organization within the meaning of Section 3(i) of the Act.

4. At all times material, Charging Party has been the exclusive representative of a bargaining unit comprised of Respondent's employees, including in the title of Deputy Court Clerk ("Unit").

5. Charging Party and Respondent were parties to a Collective Bargaining Agreement ("CBA") for the Unit that was effective December 1, 2009 to November 30, 2012 and on or about the time of the events giving rise to this matter, had just concluded negotiations on a Successor Agreement effective December 2012 through November 30, 2016.

6. Respondent employed Cheryl Hajewski on October 28, 2013 as a probationary employee in the position of Deputy Clerk in the job title of Minute Clerk.

7. At all times material, Hajewski was a public employee within the meaning of Section 3(n) of the Act and a member of the Unit.

8. At all times material, Respondent employed Leslie Rienzie-Barry as its Human Resource Director and she was authorized to act on Respondent's behalf as its agent.

9. At all times material, Respondent employed Vanessa Garcia as Annex Supervisor.

10. On or about November 18, 2013, Hajewski and other employees in the Unit went on strike.

11. On or about December 5, 2013, the strike ended.

12. On or about December 6, 2013, Rienzie-Barry held a Welcome Back meeting after the strike ended and discussed various topics with the Deputy Court Clerks in the Court Annex Emco Building in Joliet, Illinois.

13. During the Welcome Back meeting, Rienzie-Barry discussed the following topics: workplace events, general office atmosphere, workplace harassment policies, and Facebook posts made by employees during the strike.

14. Rienzie-Barry informed the group of employees at the Welcome Back meeting that Facebook posts could violate Will County's workplace harassment policies.

15. On December 6, 2013, Rienzie-Barry sent a letter/memorandum to Hajewski terminating her employment, which read, "Per my discussion with you during your probationary period, you have failed to meet probationary period requirements."

II. INVESTIGATORY FACTS[1]

The Circuit Clerk is responsible for keeping the Circuit Court of Will County's records. Circuit Clerk Pamela McGuire heads the Circuit Clerk's office. The Circuit Clerk has the following four facilities: the main courthouse, the Annex Emco Building ("Annex"), the Nicholson Facility, and the River Valley Justice Center. The main courthouse and the Annex are located on diagonal corners of the same intersection. The Annex and the main courthouse are composed of courtrooms and offices. The Human Resources Department's offices are in the

[1] Cheryl Hajewski, Jessica Baasch, and Sara Dankowski, Nancy Peet, and Joe Pluger testified on behalf of the Union. Kim Hasbrouk, Vanessa Garcia, and Leslie Rienzie-Barry testified on behalf of, or as agents of the Circuit Clerk. Based upon my observations and review of the record, I find that Hajewski, Garcia, and Rienzie-Barry are not entirely credible witnesses, and only credit their testimonies regarding uncontested background information; or when corroborated by a credible witness or credible documentation. For those same reasons, I find Baasch, Dankowski, Peet, Pluger, and Hasbrouk to be credible witnesses, and resolve my findings in favor of their testimonies when in conflict with Hajewski's, Garcia's or Rienzie-Barry's testimonies.

main courthouse. The Circuit Clerk employs approximately 171 individuals, with 132 represented in the Unit. Sixty-four Unit employees are Minute Clerks. The Circuit Clerk typically assigns between ten and thirteen employees to work at the Annex. Circuit Clerk employees work from 8:30 am to 4:30 pm.

A. General Office Policies

The Circuit Clerk maintains a General Office Policy and Procedure Manual, which, in relevant part, identifies the Circuit Clerk's food and beverage policy, attendance policy, cell phone policy, and social media policy.

The attendance policy provides that employees are tardy when not at their assigned workstation at the beginning or the workday, or have not returned from lunch or break on time. When employees report that they will be absent because they are sick, they are required to speak to their supervisor before the start of their scheduled shift. If employees are tardy, they are still required to inform their supervisor that they will be tardy prior to the start of their shift, and are then required to sign in upon arrival. Following this procedure does not excuse the tardy. Supervisors excuse tardies and absences at their discretion. Employees are required to submit documentation when calling in sick the day before or the day after a holiday. Garcia testified that this policy is in place because the court is particularly busy the day after a holiday.

The Circuit Clerk's food and beverage policy only allows hard candy and securely covered cups and bottles with secure lids at employees' workstations. The policy allows employees to store dry food in their workstation, but not consume it there. The policy further allows employees to consume food in breaks rooms, including foods brought in the office for celebrations. In practice, employees regularly eat at their desks, keep food throughout the office, and supervisors are encouraged to eat at their desks because they do not take time for lunch.

The Circuit Clerk's electronic device and cell phone policy forbids employees to use cell phones and electronic devices in the office during work hours, unless employees are on their break or lunch. The policy allows cell phones "in the break room, lunchroom, [and] hallways outside the Circuit Clerk's Office, but not in the hallways, walkways, or aisles in the Circuit Clerks Offices." Circuit Clerk employees are required to turn off and put away their cell phones during working hours, except for breaks and lunches. Such devices are not permitted in the courtroom. The Department of Human Resources can grant permission for an employee to carry their phone only upon request, and grants such permission on a case-by-case basis. In practice, it is common for Circuit Clerk employees to carry their cell phone with them in their purses to court and to keep their cell phones on their desk. Garcia and Rienzie-Barry testified that employees are only allowed to use their cell phones when given specific permission. The policy against using cell phones during working hours is in place, but not always enforced. Former Minute Clerk and Union Steward Sara Dankowski testified that Garcia witnessed her using her phone in the Circuit Clerk's Office on at least one occasion, but did not discipline her.

Will County employees wear name badges. Prior to the strike, they regularly placed smiley-faced stickers or stickers of pets on their badges. Shortly before the strike, Rienzie-Barry instructed Minute Clerk and Chief Union Steward Jessica Baasch to remove from her badge a union sticker that read "Fair Contract Now," because Rienzie-Barry said that the sticker defaced County property. After this incident, all Circuit Clerk employees were required to remove all stickers from their badges.

B. Probationary Period and Probationary Employees

Minute Clerks are responsible for putting court calls together, taking minutes from the judge at court, and entering the minutes in the Circuit Clerk's computer system. The Circuit Clerk

places new Minute Clerks on a six-month probationary period where they are trained to perform these duties. During this probationary period, the Circuit Clerk may terminate the employee at any time, with or without cause, as continued employment is conditional upon the successful completion of the probationary period. However, the length of training varies, and can range from a couple of months to four months, but six months seems to be the longest time before a trainee is working independently. If an employee completes training within six months, the probationary period continues until the employee reaches his or her six-month anniversary. There have been instances where the Circuit Clerk extended employees' probationary periods beyond their six-month anniversary. Garcia and Dankowski testified that the Circuit Clerk extends an employee's probationary period when it and the Union agree that the employee is entitled to more training, and Rienzie-Barry testified to instances where employees were granted probationary extensions in accordance with medical accommodations.

The record identifies four instances where the Circuit Clerk extended an employee's probationary period. In 2012, the Circuit Clerk extended Nancy Geldean's probationary period. In this case, Steward Dankowski testified that the Circuit Clerk granted the extension only after she advocated for an extension because she felt that her trainer did not provide Geldean sufficient training to conclude her probation. Garcia testified that the Circuit Clerk granted Geldean's extension because Garcia thought Geldean would ultimately be successful, but needed a longer probationary period. When questioned about Geldean's extension, Rienzie-Barry testified that the Circuit Clerk has "a legal obligation with a person that has disability to make a reasonable accommodation, and that's not going to be everyone's business."

The record reflects that the Circuit Clerk extended Bridgette Manley's probation, but as identified further below, it terminated her one month later. Rienzie-Barry testified that Manley

received an extension as part of a medical accommodation. The parties testified that the Circuit Clerk extended two additional employees' probationary periods.

1. Probationary Employees Contemporary to Hajewski

When the strike began on November 18,[2] the Circuit Clerk employed nine probationary employees. Brittany Budimier began her employment on July 8. Susan Garza began her employment on July 15. Kimberly Seasock began her employment on July 29. Joleena Harrod began her employment on September 9. Laura Hamm began her employment on September 30. Hajewski and Laura Zaza Zasadny began their employment on October 28. Coffe Summers and Debbie Olson began their employment on November 4.

Budimier, Zasadny, Summers, and Olson were the only probationary employees to cross the picket line. Hajewski was the most recently hired striking employee. Hajewski was the only one of these employees that the Circuit Clerk terminated during their probationary period.

2. Previously Terminated Probationary Employees

Between 2010 and 2013, the Circuit Clerk terminated fourteen probationary employees besides Hajewski for "unsuccessful probations." Rienzie-Barry testified that supervisors and trainers recommend termination, but Rienzie-Barry is the decision-maker and she implements the termination. The parties compared the following nine employees to Hajewski.

On August 31, 2011, the Circuit Clerk terminated Christina Pakieser in her fifth week of employment. In Pakieser's termination letter, Rienzie-Barry identified that she terminated Pakieser after Pakieser continued to make the same mistakes after her department head and supervisor spoke to her regarding errors in her work, and retrained her to correct those errors. Rienzie-Barry also identified that Pakieser was late returning from lunch on two occasions.

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[2] All events occurred in 2013 unless otherwise specified.

On June 1, 2012, the Circuit Clerk terminated Alison Worley in her ninth week of employment. Rienzie-Barry documented that the Circuit Clerk terminated Worley because of her attendance. Worley was fifteen minutes tardy on her first day of work. Worley was tardy on six more occasions in her first month of employment. She also returned from lunch tardy on three occasions, and in one instance when her supervisor questioned her tardiness, Worley responded that she was late because she "had things to do."

On August 1, 2012, the Circuit Clerk terminated Joan Policandriotes in her eleventh week of employment. The Circuit Clerk hired Policandriotes on May 21, 2012, conducted her 60-day performance evaluation on July 27, 2012, and terminated her on August 1, 2012. On June 5, 2012, the third week of her employment, Policandriotes's trainers spoke with her "regarding note taking, wearing her badge, workflow, familiarity with case types, coverage for time off, and Kronos [timekeeping] issues." In Policandriotes's fourth week of employment, on June 12, 2012, her supervisor spoke with Policandriotes "regarding organization, short cuts, and disappearing on [two] separate occasions." Three days later, on June 15, 2012, her trainers, and her supervisor spoke with Policandriotes "in regards to holding questions until the end of the day, disappearing, communication, professionalism, and notes on mail." Just after Policandriotes's first month of employment, on June 22, 2012, Rienzie-Barry spoke with her "in regard to office policies and procedures, errors, and attendance." Finally, on July 18, 2012, when Policandriotes had nearly completed two months of employment, McGuire, Rienzie-Barry, and Policandriotes's trainer met with her to "discuss total work performance[, and made clear to Policandriotes that she needed] to improve [her] work, as well as her attendance."

In her evaluation, Policandriotes received a rating of "improvement essential" in every category, except work relations, where she received "improvement desired." The evaluation

identifies that Policandriotes made thirty-three error logs, along with several other excessive errors, and that her superiors discussed these errors with her on a daily basis. During her time with the Circuit Clerk, Policandriotes was late to work four times, late returning from lunch three times, took two unpaid absences, and left early on several occasions. Policandriotes also violated office policy on several occasions, including one incident of eating breakfast and drinking coffee at her desk.

Rienzie-Barry testified that McGuire does not normally involve herself in training new employees, but that McGuire spoke with Policandriotes because Policandriotes is the daughter of a judge, and McGuire wanted to "dot the i's and cross the t's" before terminating Policandriotes. At the hearing, the Union asked Rienzie-Barry why the Respondent terminated Hajewski without providing her with the same level of support, or even notice that her performance required improvement. In response, Rienzie-Barry testified, "You're comparing an employee that was there three months to an employee that was there two weeks at the time these issues happened."

On October 27, 2011, the Circuit Clerk terminated Angel Jackson in her eleventh week of employment. On April 19, 2011, the Circuit Clerk terminated Susan Klabisch in her twelfth week of employment.[3]

On September 10, 2010, the Circuit Clerk terminated Dawn Reddy in her twelfth week of employment. At that time, Reddy had received over 220 hours of training. Reddy began attending court and shadowing her trainer, Marie Druszkowski on her sixth day of employment, and that her first time taking the first seat taking minutes was after her first month of employment. Druszkowksi documented that on July 26, 2010, Reddy's first day in the first seat, Reddy was able to enter basic minutes but still needed help with most minutes. Druszkowksi

[3] The parties post-hearing briefs only address Jackson's and Kabisch's lengths of employment at the Circuit Clerk.

logged that on Reddy's second day, she was very nervous, needed to relax, and had multiple spelling errors.

On January 10, 2013, the Circuit Clerk terminated Susan Hacker in her thirteenth week of employment. Hacker's 60-day evaluation identified that Hacker was easily distracted and needed to focus more, that she should have be further along, and that she needed to be more familiar with basic codes. In her evaluation, Hacker's supervisor also informed her, "Failure to improve total work performance could result in termination."

On August 27, 2012, the Circuit Clerk terminated Sandra Ciadella in her fifteenth week of employment for poor work performance. Nine weeks prior to her termination, Ciadella, her supervisor, and her department head discussed her work performance. One week later, Ciadella's supervisor met with her again to discuss the lack of improvement in her work because she was still having problems setting and cancelling court dates, dismissing cases incorrectly, and entering the wrong plaintiff's attorney. Two weeks before her termination Ciadella put the court call together wrong and failed to bring court files to court.

On August 30, 2012, the Circuit Clerk terminated Bridgette Manley in her thirty-second week of employment for failing to follow policy procedures during her probationary period. In July 2012, the Union and the Circuit Clerk agreed to extend Manley's probationary period for 90 days. At that time, her performance evaluation rated her as "improvement desired" after nearly 140 hours of training. Rienzie-Barry offered uncontested testimony that she granted Manley an extension as part of a medical accommodation.

C. Hajewski's Employment

Assistant Manager of Human Resources Kim Hasbrouck initially interviewed Hajewski. Hajewski had a second interview with Human Resources Director Rienzie-Barry, and met with

Barb McDaniel, department heads in the civil division and the criminal division, and finally with Circuit Clerk Pam McGuire.

When Hajewski began her employment on Monday, October 28, thirteen clerks reported to the Annex, including six Minute Clerks. As Annex Supervisor, Garcia was responsible for all Annex employees, and was Hajewski's immediate supervisor. Garcia maintained a training log of Hajewski's daily activities and a separate incident log documenting policy violations or concerns.

Hajewski spent her first day in orientation with Hasbrouck and training with Garcia. During orientation, Hasbrouck reviewed the Circuit Clerk's policies and procedures with Hajewski. She also gave Hajewski a copy of the policies and procedures manual, her job description, payroll calendar, benefit summary, and the Circuit Clerk's organizational chart. After orientation, Garcia began training Hajewski at the Annex. During Hajewski's first week, she observed the proceedings in the mortgage foreclosure courtroom; at a civil non-jury trial; at a civil jury trial; and because she was going to be assigned to the arbitration courtroom, Hajewski observed those proceedings three times.

In Hajewski's second week, beginning Monday, November 4, Garcia began training Hajewski on putting court calls together and putting together minutes using the Circuit Clerk's computer systems. Because Hajewski was a trainee, during court, Garcia or other trainers would take the minutes and Hajewski would follow along. After court, they would compare notes to determine to what degree Hajewski's notes matched the trainer's notes. The trainer would take the first seat and Hajewski would take the second seat. During this time, Garcia told Hajewski that she was doing a good job putting the court calls together.

On Wednesday, November 6, when Hajewski and Garcia were returning from court, Hajewski took her phone out of her pocket to tell Garcia the time. Garcia told Hajewski that it was best not to bring her phone to court again because judges do not want the clerks to have their phones in court. Hajewski responded that it would absolutely not happen again. Garcia documented this discussion in Hajewski's incident log. On Thursday, November 7, Hajewski called Garcia at 7:30 am, stating that her husband was missing, and that she was going to be late because she needed to take her children to school, which was something her husband normally did. Garcia told Hajewski that that was fine and that she should get to work as soon as possible. Hajewski arrived at the Annex at 9:04 am. Upon arrival, Garcia called Hajewski into her office and told her that she was right to call in because the Circuit Clerk watches attendance closely during an employee's probationary period. When Garcia inquired whether everything was okay with Hajewski's husband, Hajewski asked about divorce paperwork. While Hajewski was still in Garcia's office, Garcia e-mailed someone requesting that information for Hajewski. Garcia documented this incident in Hajewski's incident log.

After Hajewski returned to her desk, Garcia called Rienzie-Barry to inform her that Hajewski was late. Rienzie-Barry recommended that she give Hajewski an Employee Assistance Program ("EAP") card, and to make sure that she logged this and any other incidents. Rienzie-Barry testified that Garcia was correct to inform her of the incident because being tardy violates the Circuit Clerk's attendance policy. The record does not indicate whether Garcia excused Hajewski's tardiness. Garcia and Rienzie-Barry also testified that because Hajewski had called in prior to being tardy, she did not violate any policy. On November 8, in Hajewski's incident log, Garcia logged that she had to tell Hajewski to put her phone away when she saw that it was vibrating on her desk. Garcia also wrote, "(She needs to leave her personal life at home)[.]"

During Hajewski's third week at the Circuit Clerk's office, Hajewski continued to do minutes and put court calls together. On Tuesday, November 12, Hajewski informed Garcia that she had a doctor's appointment that afternoon and needed to leave at 3 pm instead of 4:30 pm.[4] Since the previous day was Veterans' Day, Hajewski provided the required doctor's note. During this week, Garcia discussed Hajewski with Annex Union Steward Dankowski. Dankowski testified that she "thought it was a positive conversation about how [Hajewski] was doing and [Garcia was] optimistic that she would do well." Dankowski testified that as a Steward, supervisors typically informed her if a probationary employee was having problems.

On Thursday, November 14, Garcia allowed Hajewski to sit in the first chair in the arbitration courtroom. In Hajewski's training log, Garcia wrote that Hajewski was extremely flustered and that she could not multitask. Garcia testified that it takes several months for a new employee to be fully trained in the first seat. She also testified she typically allowed a probationary employee to begin training in the first seat anywhere between a few weeks to a few months into the employee's training, and that it depended on the comfort level of the employee. Hajewski was employed for less than three weeks when she began training in the first chair for the first time, and did not take the first chair again during the term of her employment. Garcia testified that probationary clerks sitting in the first chair for the first time normally make mistakes, and that it is the trainer's responsibility to ensure that the minutes are taken correctly, by taking his or her own minutes. Garcia also testified that when Hajewski entered the minutes in the computer system later that day, that Hajewski had no problem. Dankowski testified that it was common for clerks working in a courtroom for the first time to be easily flustered.

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[4] Hajewski testified that when she began in October, she informed Garcia that she would need to leave early one day because of a doctor's appointment, and that she reminded Garcia the day before the appointment, on November 11. Garcia testified Hajewski only informed her on the day of the doctor's appointment. However, I take judicial notice that Monday, November 11 was Veterans' Day, a holiday. Thus, in this instance I must credit Garcia's testimony.

Garcia and Rienzie-Barry testified that on November 14, Garcia called Rienzie-Barry and told her that she did not think that Hajewski would make it through her probationary period. Garcia and Rienzie-Barry testified that they decided to terminate Hajewski. Garcia and Rienzie-Barry both testified that they based this this decision upon Hajewski's cell phone violations, her attendance, and her performance in court on November 14. Garcia had previously trained approximately 25 new Minute Clerks. Garcia testified that Hajewski was the first one she thought would not successfully complete her probationary period. Rienzie-Barry testified that she did not question Garcia's assessment because she had confidence in Garcia's opinion and her only response was that she told Garcia that she would begin the paperwork. Rienzie-Barry testified that she did not terminate Hajewski the next day because she was preparing for the impending strike.

On the morning of either November 14, or November 15, Hajewski informed Garcia that that she would participate in the strike and would not be attending work once the strike began.

D. Strike and Events that Occurred During the Strike

AFSCME, Council 31 represents approximately 1200 employees in several bargaining units at twenty-seven locations in Will County. AFSCME employees covered under all but one of those units participated in the strike. Prior to the strike, on November 7, the Unit informed the Circuit Clerk of its intent to strike. AFSCME Staff Representative Joe Pluger, the Chief Judge, and several others met to discuss the strike. Pluger informed everyone that that strike was going to begin on Monday, November 18, at 7:30 am. At that time, approximately 120 Circuit Clerk employees went on strike, as planned. Approximately twelve Circuit Clerk employees did not participate in the strike when it began. Five of those employees were probationary employees.

At the beginning of the strike, every Annex Unit employee participated in the strike, including Hajewski, who was the Annex's only probationary employee at the time.

The Union established picket lines at the entrances of the main courthouse and the Annex. The picket lines were set up in such a way that non-striking employees would have to cross the picket line when arriving at and leaving those buildings. Unit members picketed in shifts. The Annex picket line consisted of between ten to fifteen people, and the remaining employees picketed at the main courthouse.[5] Union Stewards Baasch, Dankowski, and Nancy Peet were picket captains. Baash and Peet stationed themselves at the main courthouse, and Dankowski stationed herself at the Annex. The striking employees chanted, used loud speakers and bull horns, set off car alarms, banged pots and pans, and yelled at non-striking employee going to and from work, by calling them "scabs" and other names. The non-striking employees would respond just as hostilely to the strikers. For example, it was common for non-striking employees to give the strikers "the finger." One employee who crossed the picket line lifted up the back of her jacket and showed everybody her butt and said that "that's where [they could] kiss it." Upon arrival, non-striking employees would call Rienzie-Barry. She would then inform the Circuit Clerk's IT Director, and Chief of Staff Chuck Squires, and they would enter to parking lot and escort the non-striking employees across the picket line to their assigned building. Employees picketed from approximately 8 am until after the main courthouse and the Annex closed. Hajewski was typically there between 8 am and around 3 pm.

1. County Board Meeting

On Thursday, November 21, the striking County employees met at the main courthouse, chanted, and marched several blocks to the County Building, where the County Board meeting

[5] The record does not indicate whether Unit members set up picket lines at the two other facilities.

would take place that morning. The striking employees continued their chanting inside the building, and made their way to the gallery area. Once in the gallery area, Hajewski began leading the chanting because Baasch lost her voice. The striking employees delayed the meeting. Rienzie-Barry attended the Board meeting, where Baasch saw her sit in the back of the room in a swivel chair. From that day forward, Hajewski regularly led the chants outside the Annex. During the course of the strike, Dankowski testified that she twice saw Rienzie-Barry outside the Annex, where she had a view of the picketing employees, and that she saw Garcia arriving for work while the employees were picketing on at least one occasion. Garcia testified that the non-union employees arrived at work prior to the striking employees, left work after the striking employees finished picketing for the day, and that during the strike she only left the Annex once while employees were picketing. Baasch testified to seeing Rienzie-Barry twice outside the courthouse. Both Rienzie-Barry and Garcia deny seeing Hajewski at the picket line. As the strike took place in November, the strikers wore heavy coats and were generally well covered.

2. Facebook Posts

The Unit maintained a private Facebook page during the strike. The page's administrator granted access only to striking employees. In order to gain access to the page, the administrator would first confirm an employee's identity and striking status. In instances where the group administrator became aware that a striking employee crossed the picket lines, he revoked the employee's access. Over the course of the strike, at least one Circuit Clerk employee crossed the picket lines and returned to work.

Hajewski was very active on the Facebook page. She posted her opinions regarding the strike and the employees who crossed the picket line. On Monday, November 25, Annex employee, Julie Schedin crossed the picket line and returned to work. At that time, she became

the only Unit employee working at the Annex. On November 26, Hajewski posted on the Facebook page a specific incident where upon seeing Schedin cross the picket line she coughed "scab." When Dankowski became aware that Schedin crossed the picket line, Dankowski asked the administrator to revoke Schedin's access to the Facebook page.

One main courthouse employee who did not participate in the strike posted on her personal Facebook page that the bathrooms were much cleaner during the strike because the "animals [were] outside where they belong." Striking employees that were Facebook friends with her printed out the post and distributed it to Squires and striking employees at the picket line.

3. Garcia's E-mail to Rienzie-Barry

On November 29, Garcia sent Rienzie-Barry the following email regarding Hajewski:

> 11/7/13 – late 34 minutes-said her husband disappeared last night and she thinks she has located him.
>
> 11/12-13 – told me she needed to leave at 3:00 for a Dr. appt. punched out at 2:56. (She did provide a Dr. note that you have and I believe it was a physical therapy note)
>
> I don't have much on her as I only had her a couple of weeks. She couldn't really mess anything up yet.
>
> 11/6 – Took her cell phone with her to court. I asked her to make sure she doesn't. Was this covered with her by chance when she got hired?
>
> 11/8 – Had to tell her to put her phone away, it was vibrating on her desk.

Garcia testified she wrote the email as a follow up to the discussion she and Rienzie-Barry had on November 14, and that her first chance to do so was November 29, the day after Thanksgiving. Upon testifying, Garcia could not explain why she did not include Hajewski's performance on November 14 in this email. She also testified that when she wrote, "She couldn't really mess anything up yet," she was referring to errors in minute entries. As

demonstrated by other termination letters, the Circuit Clerk typically identified the amount of errors a probationary employee made during their employment.

E. Post-Strike

All Unit employees returned to work on Thursday, December 5. According to Hajewski's training log, on December 5, Garcia asked Hajewski to process dismissals in the office's computer system, and that Hajewski asked questions regarding procedures she should have known. Garcia also noted that she heard a lot of whispering on the side of the office where Hajewski sat. She also noted that Hajewski had rolled her chair over to fellow clerk Tammy Platt and that she could hear them talking. Garcia additionally documented that she heard them talking more than once during that day.

Also on December 5, Judge O'Leary came to the Annex to discuss with the clerks the Christmas luncheon that needed to be rescheduled because of the strike. During this meeting, Hajewski ate potato chips and repeatedly asked the Judge questions. Garcia documented in Hajewski's incident log that Hajewski was eating a snack while speaking with the Judge. Garcia further documented that after the meeting she informed Hajewski that she could only eat hard candy at her desk. Garcia testified that she thought it was very rude and disrespectful of Hajewski to interrupt the Judge and to be snacking during the meeting.

On December 5, Schedin, the only Annex employee to cross the picket line, went to Garcia's office and began crying. She told Garcia that other clerks were excluding her from their conversations, and that Platt told her that the Union did not invite her to the Union Christmas party. Garcia called Rienzie-Barry and reported Schedin's statements. Rienzie-Barry told Garcia that she would be at the Annex the next day and she would speak with Schedin then.

Over the last twenty years, the main courthouse had approximately 15 cameras in public areas of the courthouse and in the financial areas where employees handled money. When Unit employees returned to work, the Circuit Clerk had added four new cameras in main courthouse locations where only office employees had access. Rienzie-Barry testified that she only became aware of the cameras when Union Vice President Ron Adams and Pluger asked why the Respondent installed the new cameras, and that this information upset her. Rienzie-Barry further testified that the Circuit Clerk's IT Director informed her that because of the aggressive conduct between the strikers and the employees who crossed the picket line during the strike, he thought it would be okay to put cameras in areas of the courthouse where there might be remaining friction between striking and non-striking employees. There were no new cameras placed in the Annex.[6]

Rienzie-Barry, Peet, and Union Representative Billy Brown held a meeting to discuss the new cameras in the main courthouse. In that meeting, Rienzie-Barry also questioned Peet's knowledge of Schedin's allegations regarding the Union Christmas party. Rienzie-Barry also informed Peet and Brown that she was terminating a probationary employee.

The Circuit Clerk held two welcome back meetings. The purpose of these meetings was to inform the clerks of any effects the strike had on benefits days, seniority, and generally put a cap on the strike in order for the Circuit Clerk to resume its pre-strike performance level.

Rienzie-Barry and McGuire conducted the first welcome back meeting, which took place on Thursday, December 5, at the main courthouse. Rienzie-Barry informed the clerks that they should take advantage of the EAP if the strike left any tension between striking and non-striking

[6] The Complaint for Hearing also alleges that Respondent violated Sections 10(a)(4) and (1) of the Act when it installed these cameras. However, at hearing, Charging Party provided that while it did not seek to formally amend the Complaint for remove those allegations, it did not seek a finding on whether Respondent's actions regarding the cameras violate Section 10(a)(4) and (1) of the Act.

employees. Baasch testified that she thought Rienzie-Barry's tone was very derogatory and seemed to be directed at only the striking employees, though two of the non-striking employees attended the meeting. Rienzie-Barry informed the employees that Will County would not be hosting a Christmas party for the Circuit Clerk's office and that it cancelled all other holiday events because the strike interfered with planning those events.

In an apparent effort to motivate employees upon their return to work, Rienzie-Barry quoted a posting from the Unit's Facebook page, which urged the striking employees to put the strike behind them and to get on with their work at the Circuit Clerk's office. She also referenced several other posts from the Unit's Facebook page. Rienzie-Barry addressed and specifically refuted a Facebook thread regarding striking employees discussing that the non-striking employees had used their office funds to pay for lunch during the strike. Rienzie-Barry informed the clerks that an employee is subject to discipline if he or she posts an inappropriate message on Facebook and someone then refers to that message at work, because once mentioned at work, that message has been brought into the workplace.

Rienzie-Barry conducted the second welcome back meeting on Friday, December 6 at the Annex. Immediately prior to the meeting, Rienzie-Barry went to the Annex to speak with Schedin. She first asked Schedin how she was doing. She then relayed to Schedin the following contents of her conversation with Peet. The Union was not hosting an official Christmas party. Some union members who participated in the strike were going out, and Schedin was not invited.

At the welcome back meeting, Rienzie-Barry discussed the same items addressed at the courthouse welcome back meeting, but she testified that she did not quote Facebook posts at the Annex meeting. During the meeting, Hajewski interjected, stating that things were fine at the Annex, that they were a small group, and that the issues Rienzie-Barry seemed to be referring to

only existed at the main courthouse, but not at the Annex. Rienzie-Barry responded by stating that the Circuit Clerk's office encompassed all its locations, and that the Annex was not a separate entity. When Hajewski stated that everything at the Annex was okay, Schedin interjected, stating, "No, things are not okay here, I am being excluded from things." Hajewski also questioned whether she would be receiving a raise, and corrected Rienzie-Barry when she addressed Schedin's concerns about the Union Christmas party.

F. Hajewski's Termination

After the Annex welcome back meeting, Rienzie-Barry and Garcia went into Garcia's office. As Rienzie-Barry exited Garcia's office and was getting ready to leave the Annex, Hajewski asked if she could speak with Rienzie-Barry. They returned to Garcia's office, where Hajewski apologized, telling Rienzie-Barry that she knew she came off as hostile during the welcome back meeting. She told Rienzie-Barry that she was only trying to explain that she did not understand why Rienzie-Barry was bringing up the tensions that came about during the strike, and she thought that the more they discussed the animosity the longer it would continue to be a problem. In response, Rienzie-Barry told her that she had been planning to terminate her later that afternoon, but instead, she was terminating Hajewski immediately, and directed her to collect her stuff. When Hajewski asked why, Rienzie-Barry told her that she was terminating her because Hajewski brought her cell phone into work, called off sick one day, and that she was disrespectful to a judge.[7]

Hajewski then began crying, and asked Garcia, "You were telling me all the time that I was doing so well, so how could this be the case." Garcia did not respond. Hajewski protested for a

[7] Hajewski testified that Rienzie-Barry told her that one of the reasons for her discharge was that she was rude to a judge. Rienzie-Barry denied this in her testimony. I credit Hajewski's version, because as identified below, on December 13, Rienzie-Barry wrote a letter to Pluger relaying the conversation, which is consistent with Hajewski's testimony.

few minutes. Garcia testified that this was a heated exchange. While at her desk collecting her stuff, Garcia typed up Hajewski's termination letter. Rienzie-Barry then presented Hajewski with a termination letter, which provides, "Per my discussion with you during your probationary period, you have failed to meet probationary period requirements."

On December 7, Pluger requested information and documentation from Rienzie-Barry regarding Hajewski's termination. In compliance with this request, on December 13, Rienzie-Barry wrote a letter to Pluger, which identified what she discussed with Hajewski when she informed Hajewski of her termination, and included as section entitled "HR notes from discussion with Supervisor regarding Cheryl H."

Regarding the conversation with Hajewski, Rienzie-Barry wrote:

> In the termination conversation with Cheryl on December 6th, and a summary of the information discussed with Cheryl's supervisor and other management the following was discussed:
>
> - Cheryl was informed that during her probation she demonstrated a general failure to grasp and retain information that is necessary for successful performance of her job. This information included:
>
> Following policies and procedure
> Total work performance

Rienzie-Barry documented that she discussed the following specific incidents: Hajewski's unacceptable attendance on November 7, and November 12; Hajewski's cell phone violations on November 6, and November 8; that "she was disrespectful to the Judge in a meeting she attended on December 5th[;]" and that Hajewski "continuously interrupted the [December 6th welcome back] meeting[, and became agitated when HR told her that this is not the forum to discuss the conversation that [Hajewski] was trying to bring up." At the hearing, Rienzie-Barry denied that Hajewski's behavior before the judge factored into her decision to terminate Hajewski, and denied identifying it as a reason in her conversation with Hajewski.

Rienzie-Barry's letter also provides that she and Garcia "had conversations regarding Cheryl's performance on: 11/7, 11/12, 11/14, 12/5, and 12/6." The letter further identified the following as Rienzie-Barry's notes from those discussions:

> 11/6 – took her phone to court (was told during orientation that she cannot take her phone to court).
>
> 11/7 - late 34 minutes (called her supervisor to say she would be late). During orientation Cheryl was told the importance of timely attendance in the office.
> - Asked her supervisor for information on filing for a divorce. She told her supervisor that her husband wanted a divorce.
>
> Supervisor contacted HR. Red flags on attendance and being unprofessional with her discussions. Supervisor noted that the employee was to be told to leave her personal business at home and the need for regular, timely, and predictable attendance.
>
> 11/8 – Supervisor told Cheryl again, to put her phone away
>
> 11/12 – Cheryl told her supervisor she had to leave early
>
> Supervisor contacted HR ....
>
> ....
> 11/14 – while in court, very flustered on how she was handling her work. Supervisor discussed with HR. Employee has hard time multitasking. She had problems working on Arbitration minute entries and other tasks that should have come easy to her.
>
> 11/14 - Supervisor and HR discussed termination of the probationary employee.
>
> 12/5 - HR informed Chief Steward and Billy Brown that Cheryl would be terminated on Friday, December 6th.
> 12/5 - Judge came in to address the employees on the holiday gathering ....
>
> 12/5 - Given task to process dismissals ....
>
> Supervisor contacted HR about the status of the termination. HR told supervisor that she would document, inform the union and terminate the employee on Friday.
>
> 12/6 – In an email to Joe Pluger .... HR informed the union of Cheryl's discharge.
>
> 12/6 – During the Welcome Back meeting at the Annex, HR read the welcome back letter and discussed getting back to the business of taking care of the public ....

> After the meeting, [while in Garcia's office, Rienzie-Barry told Hajewski that Rienzie-Barry] was scheduled to come back to the Annex [that] afternoon to discuss her probationary period .... [Rienzie-Barry informed her] that based on her total work performance to date during her probationary period she was being terminated.

On December 9, the Union filed a grievance regarding Hajewski's termination. On January 7, 2014, Rienzie-Barry returned the grievance to the Union, informing it that as a probationary employee Hajewski's termination was not grievable. Rienzie-Barry testified that the Union was aware that the Circuit Clerk would not process grievances regarding probationary employees. In November 2013, Union filed a grievance regarding discipline imposed on a different probationary employee, and Rienzie-Barry informed the Union that pursuant to the CBA, the Respondent does not process grievances for probationary employees.

III. ISSUES AND CONTENTIONS

The Charging Party argues that Respondent terminated a probationary employee who was not entitled to grieve a termination under the CBA in retaliation for nearly all of its bargaining unit employees going on strike. The Charging Party further argues that Respondent's agent Rienzie-Barry specifically chose Hajewski out of sympathy for Schedin in response to Hajewski calling her a scab, and because Hajewski was the only probationary employee to take such an active role on the picket line and on the Unit's Facebook page during the strike.

Respondent argues that it terminated Hajewski because she repeatedly violated its policies and because her work was not meeting her supervisor's expectations. Respondent further asserts that because it made the decision to terminate Hajewski prior to knowing that Hajewski was going to participate in the strike, her termination is unrelated to any protected union activity Hajewski engaged in while on strike.

IV. DISCUSSION AND ANALYSIS

Respondent violated Sections 10(a)(2) and (1) of the Act when it terminated Hajewski because of her active involvement in the Union's strike and for engaging in strike-related protected union activity.[8]

Section 10(a)(2) of the Act provides that a public employer commits an unfair labor practice when it or its agents "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." In order to violate the Act as identified in Section 10(a)(2), the charging party must prove that the employer took action with the specific intent of discouraging or encouraging union membership or support. Here, the Union must prove that the Circuit Clerk intended to discourage union membership or support, and terminating Hajewski was the means to achieve that end.

To establish a *prima facie* case of a 10(a)(2) discriminatory termination, a charging party must prove by a preponderance of the evidence, that 1) the employee engaged in protected union or other statutorily protected activity, 2) the employer was aware of the employee's protected activity, 3) the employer terminated the employee, and 4) the employer was motivated in whole or in part by the employee's protected conduct or by its anti-union animus, with the intent to discourage or encourage union membership or support. See Sheriff of Jackson Cnty. v. Ill. State Labor Rel. Bd., 302 Ill. App. 3d 411, 415 (5th Dist. 1999); City of Elmhurst, 17 PERI ¶2040 (IL LRB-SP 2001); Chicago Transit Auth., 30 PERI ¶9 (IL LRB-LP 2013). To satisfy the fourth element, a party must establish a causal link between the employee's union activity and the

[8] The Complaint for Hearing also alleges that Respondent also independently violated Section 10(a)(1) when it terminated Hajewski. However, Charging Party's post-hearing brief only alleges that Respondent violated 10(a)(1) derivatively based upon its 10(a)(2) violation, and does not address an independent violation. Thus, I consider the argument waived and will not address the issue.

termination, such that the protected union activity was a substantial or motivating factor in the employee's termination. City of Burbank v. Ill. State Labor Rel. Bd., 128 Ill. 2d 335, 346 (1989); Pace Suburban Bus Div. of Reg'l Transp. Auth. v. Ill. Labor Rel. Bd., 406 Ill. App. 3d 484, 495 (1st Dist. 2010). Absent this causal link, the *prima facie* case is not established.

Once a charging party establishes a *prima facie* case, the burden shifts to the employer to demonstrate that it would have terminated the employee for legitimate business reasons even without the discriminatory motive. City of Burbank, 128 Ill. 2d at 346. However, simply proffering a legitimate business reason for the termination does not satisfy this burden. Id. The fact finder must determine whether the proffered reason is bona-fide or pretextual. Id. If the employer did not actually rely on the proffered reason, then the reason is pretextual and the inquiry is complete. Id. Conversely, if the employer advances a legitimate reason and is found to have relied upon that reason, then the inquiry continues and is characterized as dual motive. Id. at 347. The employer then must demonstrate by a preponderance of the evidence that it would have terminated the employee regardless of the employee's protected union activity. Id.

A. Charging Party's *Prima Facie* Case

The Union has proven its *prima facie* case that the Circuit Clerk terminated Hajewski in retaliation for her active and visible role in the strike.

There is no dispute that Respondent terminated Hajewski. Furthermore, the Charging Party has proven that Hajewski's union activity was a substantial and motivating factor in Respondent's decision to terminate Hajewski.

1. Hajewski's Protected Union Activity

Hajewski engaged in protected union activity when she participating in the strike, took an active and visible role in the strike by leading the striking employees' chanting, and when she

posted on the union's Facebook page; including posting statements calling non-striking employees scabs. See Linn v. Plant Guard Workers, Local 114, 383 U.S. 53 (1966) (the use of "scab" and other exaggerated rhetoric was commonplace in labor disputes and protected by the National Labor Relations Act). Several of Charging Party's witnesses testified to Hajewski's protected union activity, and Respondent did not offer testimony or evidence to the contrary.

Charging Party has further demonstrated that Hajewski engaged in protected union activity prior to Respondent's decision to terminate her. Respondent argues that Hajewski's protected union activity is not relevant to my analysis because it argues that Respondent decided to terminate Hajewski on November 14, before she engaged in such activity. For the following reasons, I do not credit Respondent's version of events. First, the record is devoid of credible documentation to support Respondent's assertion. In Rienzie-Barry's letter to Pluger, she identified that her notes from conversations with Garcia provide that on "11/14 – Supervisor and HR discussed termination of probationary employee." However, I do not credit this letter as evidence that Respondent decided to terminate Hajewski on November 14 because the notes themselves are not in the record, nor does the record indicate whether Rienzie-Barry took those notes at the time the discussions occurred, or at some later date. Thus, the record does not contain documentation contemporaneous with Respondent's assertion. Second, the earliest credible documentation relating to Hajewski's termination was composed on November 29, when Garcia e-mailed Rienzie-Barry, and the e-mail does not provide that on November 14 Respondent decided to terminate Hajewski. Nor does the e-mail address Hajewski's November 14 performance, despite Garcia's testimony that she wrote the e-mail to document the reasons for Hajewski's termination. When the Union asked Garcia why she did not identify the November 14 incident in the e-mail, she could not say. Third, as discussed further in my analysis of

Respondent's motive, Respondent's conduct before, during, and after the strike, does not support this version of events. Upon considering all the evidence, I find that Respondent decided to terminate Hajewski after she began participating in the strike.

2. Respondent's Knowledge of Hajewski's Protected Union Activity

Charging Party has proven the second prong of its *prima facie* case, that Rienzie-Barry was Respondent's agent who decided to terminate Hajewski, and that she was aware of Hajewski's protected union activity when she made that decision.

Rienzie-Barry was the agent who decided to terminate Hajewski. Garcia and Rienzie-Barry testified that Garcia recommended terminating Hajewski, and that Rienzie-Barry made the ultimate decision. Since I do not find that the Respondent decided to terminate Hajewski on November 14, I also do not credit Garcia's and Rienzie-Barry's testimonies regarding how the decision to terminate Hajewski occurred. Nonetheless, I find that as the Human Resources Director it is more likely than not that Rienzie-Barry was the decision-maker.

Furthermore, Rienzie-Barry was aware of Hajewski's protected union activity when she decided to terminate Hajewski. Knowledge of an employee's protected activity must be specifically imputed to an appropriate agent of the employer who is in some manner responsible for the adverse employment action. Cnty. of Cook and Sheriff of Cook Cnty., 31 PERI ¶171 (IL LRB-LP 2015); Macon Cnty. Bd. and Macon Cnty. Highway Dep't, 4 PERI ¶2018 (IL SLRB 1988); Cnty. of Menard, 3 PERI ¶2058 (IL SLRB 1987). A manager's or a supervisor's knowledge of an employee's union activities will ordinarily be imputed to the employer, but a fact-finder may not do so in light of affirmative contrary evidence. Macon Cnty. Bd. and Macon Cnty. Highway Dep't, 4 PERI ¶2018. The relevant question is which, if any, of Hajewski's particular protected activities Rienzie-Barry was aware.

Rienzie-Barry is presumed to know that Hajewski was participating in the strike when she terminated her because Garcia and Hasbrouck were both aware no later than November 21. The record reflects that Rienzie-Barry had regular communication with Garcia and that Hasbrouck worked under Rienzie-Barry in the same department. Moreover, Rienzie-Barry never denied possessing such knowledge. Thus, Garcia's and Hasbrouck's knowledge that Hajewski was participating in the strike can be correctly imputed to decision-maker Rienzie-Barry. Cnty. of Cook, 31 PERI ¶108 (IL LRB-LP 2014) (knowledge of employees' protected activity was imputed to the respondent's decision-maker where the respondent's high-ranking agent witnessed the protected activity).

I further infer that Rienzie-Barry knew Hajewski was out on strike because it is illogical that as the Human Resources Director Rienzie-Barry would not have been provided the names of all the striking employees, more likely in this case, the names of the non-striking employees. Thus, Respondent knew that Hajewski was on strike on or before November 18.

Rienzie-Barry also knew of Hajewski's active role on the picket line. An employer can be found to have knowledge of an employee's union activity through direct or circumstantial evidence. Rockford Twp. Hwy. Dep't v. State Labor Rel. Bd., 153 Ill. App. 3d 863, 881 (2nd Dist. 1987); City of Sycamore, 11 PERI ¶2002 (IL SLRB 1994). One method of finding employer knowledge circumstantially is through the "small plant" doctrine in which the employer's knowledge of the employee's union activities is inferred where such activities are conducted at a small workplace and are carried on in such a manner or at such times that it may be presumed that the employer must have noticed them. City of Sycamore, 11 PERI ¶2002. The "small plant" doctrine rests on the theory that an employer at a small facility is likely to notice activities at the plant because of the closer working environment between management and labor.

Rockford Twp. Hwy. Dep't, 153 Ill. App. 3d at 881; Alumbaugh Coal Corp. v. NLRB, 634 F. 2d 1380 (8th Cir. 1980). It is because of the close working relationship that an employer is not required to be actual witness to the union activity, but it can be inferred that the employee's coworkers who were witnesses informed the employer of the employee's union activity. Rockford Twp. Hwy. Dep't, 153 Ill. App. 3d at 881 (even though the employer was not physically present when the employee engaged in union activity, the Appellate Court affirmed the Board's inference that the employee may have been able to obtain information from other employees who witnessed the activity). However, under such circumstances, a fact finder may not impute such knowledge to the employer in light of affirmative evidence to the contrary. Macon Cnty. Bd. and Macon Cnty. Highway Dep't, 4 PERI ¶2018 (manager's knowledge of the employee's protected activity was imputed to the decision-maker); Cnty. of Cook and Sheriff of Cook Cnty., 31 PERI ¶171 (employer's knowledge of employee's protected activity was not presumed where decision-maker denied knowing that the employee engaged in such activity at the time it took the adverse action); Cnty. of Cook, 31 PERI ¶108 (employer's agent's knowledge of the protected activity was imputed to the decision-maker because there was no affirmative evidence that the decision-maker did not know of the activity).

The small plant doctrine is applicable here because thirteen of the Circuit Clerk's employees, and Supervisor Garcia reported to the Annex building. Schedin was the only Annex employee that crossed the picket line. Not only is it likely that Schedin witnessed Hajewski leading the chants when she arrived at work, she also would have participated when Hajewski led the chants because Schedin participated in the strike between November 18 through November 22, and Hajewski began leading chants on November 21, at the County Board meeting. Under these circumstances, I infer that Garcia must have known that Hajewski was leading the chanting

among the striking employees outside the Annex. I further find that while Garcia and Rienzie-Barry denied witnessing Hajewski leading the chants, neither denied knowing that Hajewski led the chants. Because there is no affirmative evidence to the contrary, I impute Garcia's knowledge to Rienzie-Barry.

I also infer that both Garcia and Rienzie-Barry were aware of Hajewski's comments on the Unit's Facebook page. Whether or not Rienzie-Barry had direct access to the Unit's private Facebook page is not dispositive, because she demonstrated knowledge of specific posts when she quoted and referenced those posts at the December 5 welcome back meeting. There is no reason to believe her knowledge of the activity on the Facebook page is limited only to those posts. Thus, I infer that Rienzie-Barry had knowledge of Hajewski's active Facebook activity, including the post where she referenced calling Schedin a "scab" on the picket line.

3. Respondent's Discriminatory Motive

Turning now to the final prong related to discriminatory motive. The Union has demonstrated a causal connection between Respondent's decision to terminate Hajewski and her protected union activity.

Motivation is question of fact. As the fact finder, I may infer a causal connection between discriminatory motive and adverse conduct via direct evidence such as statements or threats, or via circumstantial evidence. City of Burbank, 128 Ill. 2d at 345; Pace Suburban Bus Div., 406 Ill. App. 3d at 496-497. To infer discriminatory motive based upon circumstantial evidence, I may consider evidence such as the timing of the adverse action in relation to the occurrence of the union or otherwise protected activity, any pattern of the employer's conduct directed at those engaging in union or otherwise protected activity, shifting explanations for employer's actions, inconsistency in the reasons given for its action against the employee as compared to other

actions by the employer, and an employer's expressed hostility towards unionization in conjunction with knowledge of the employee's union or otherwise protected activity. City of Burbank, 128 Ill. 2d at 346; Pace Suburban Bus Div., 406 Ill. App. 3d at 497.

Based upon the following circumstantial evidence, I find that Respondent terminated Hajewski at least in part because of her protected union activity, and that its provided reasons are pretextual.

First, the timing of Hajewski's termination is suspicious. Respondent terminated Hajewski only two days after returning from the strike, where she was an active and visible participant both leading the chant at the picket line and on the Unit's Facebook site.

Second, Rienzie-Barry demonstrated an open hostility for union support when she required employees to remove union stickers from their badges when the Circuit Clerk had previously allowed employees to wear other types of stickers. She also demonstrated sympathy for Schedin, the target of Hajewski's protected activity when she called Schedin a scab.

Third, Respondent offered inconsistent explanations for terminating Hajewski. Prior to the hearing, Respondent's articulated reasons for terminating Hajewski included her performance through December 6. Then, at the hearing, Garcia and Rienzie-Barry testified that the reasons were limited to Hajewski's performance through her third week of employment. Also, Rienzie-Barry contradicted her direct testimony, when upon examination by the Union, she testified that Respondent terminated Hajewski for her performance in only her first two weeks of employment.

Prior to the hearing, Rienzie-Barry identified that Respondent considered Hajewski's post-strike behavior. In the letter, Rienzie-Barry wrote to Pluger, her identified reasons for terminating Hajewski included Hajewski's behavior "to date." Rienzie-Barry specifically

identified that Hajewski's conduct at the meeting with Judge O'Leary and at the welcome back meeting contributed to her determination that Hajewski's "[t]otal work performance" was cause for discharge. However, Rienzie-Barry and Garcia testified that because they had already decided to terminate Hajewski prior to the strike, they denied that events that occurred after November 14 influenced the decision, and Rienzie-Barry specifically denied discussing Hajewski's behavior during the meeting with the judge when she discharged Hajewski.

Rienzie-Barry contradicted her own testimony when examined by the Union. Garcia and Rienzie-Barry both testified that they decided to terminate Hajewski on November 14, in Hajewski's third week of employment. They also testified that Hajewski's leaving early for a doctor's appointment on November 12 and her November 14 performance factored into the decision to discharge Hajewski. However, when the Union's attorney asked Rienzie-Barry why the Respondent did not provide Hajewski the same support it provided Policandriotes before terminating her, Rienzie-Barry testified that Hajewski had only been there "two weeks at the time these issues happened."

Fourth, Respondent offered reasons are evidence of pretext because at hearing its witnesses testified that it terminated Hajewski after she violated one enforced policy and the record reflects that the Circuit Clerk does not have a policy of terminating probationary employees for a single policy violation. Hajewski did violate the enforced cell phone policy by bringing her phone to court, however, the Circuit Clerk does not have a written policy or practice of terminating a probationary employee for a single violation of its workplace policies. Whether Hajewski kept her phone on her desk violates the Respondent's policy is questionable because Garcia testified that the Circuit Clerk has granted permission to nearly every employee to have his or her cell phones out in the work area outside the courtroom. While Hajewski violated the rule because

she did not obtain such permission, the record does not reflect that Respondent informed her that such an obvious practice of keeping cell phones out required specific permission. I find it suspicious for Respondent to find Hajewski in violation of a rule that it so loosely enforces.

Next, Respondent's treatment of Policandriotes is evidence that its reason for terminating Hajewski is pretextual. Rienzie-Barry testified that the only consideration for being the daughter of a judge that Policandriotes received was having one final meeting with McGuire prior to her termination. Rienzie-Barry further testified that she believes that Policandriotes's employment history is not comparable with Hajewski's employment history because Policandriotes worked for over two months and Hajewski had worked for the Circuit Clerk for "two weeks at the time these issues happened." I interpret Rienzie-Barry's testimony to mean that Respondent would have discharged Policandriotes within her first three weeks of employment if her conduct were similar to Hajewski's conduct. However, the record provides that within her first three weeks of employment Policandriotes's superiors had already identified multiple issues that taken together, warranted discussion, but did not terminate her until several weeks later. Here, the record demonstrates that in the same length of time, Hajewski's superiors identify similar concerns regarding her performance, but instead of informing Hajewski of her deficiencies and giving her time to improve, Respondent decided to terminate her. Even when considering only the first three weeks of Policandriotes's performance compared to Hajewski's performance, Respondent treated Hajewski less favorably. Thus, I find that Respondent's offered reasons and version of events are evidence of pretext when comparing them to the circumstances surrounding Policandriotes termination, and considering Rienzie-Barry's testimony on that subject.

Furthermore, Respondent treated Hajewski less favorably than it treated other probationary employees who Respondent terminated for not performing to the expectations of their superiors.

Respondent has a practice of only terminating probationary employees after first giving them the opportunity to improve their performance, or after committing violating policies on multiple occasions.[9] Respondent terminated Pakieser, Ciadella, Hacker and Reddy after their superiors noted their poor performance, but Respondent did not immediately terminate them. Hajewski was not consistently underperforming, and she did not consistently violate office policies. Hajewski's only performance-related incident occurred on the date that Respondent alleges it decided to terminate her. Hajewski was performing a function for the first time, a function that Garcia testified that she might not let a trainee perform until two months into his or her training. Garcia counseled Hajewski and documented her poor performance, but compared with other employees who Respondent terminated after first giving them opportunities to improve their performances, I find it implausible that Respondent would terminate Hajewski without giving her the same opportunity to improve.

Respondent treated Hajewski less favorably than it treated other probationary employees who Respondent terminated for violating the Circuit Clerk's policies. Worley is the only probationary employee Respondent terminated for policy violations, rather than for poor performance, and it only did so after she was fifteen minutes late on her first day of work, late six more times in her first month, and returned late from lunch three times. Hajewski was late once and left early once, but Respondent's witnesses testified that neither of those incidents violated its policies because Hajewski followed the procedures in place in those circumstances. Even if Hajewski's attendance did violate Respondent's policy, Respondent's conduct in terminating Hajewski after only two incidents is inconsistent with its treatment of Worley who was not terminated until after ten attendance issues. Accordingly, it is not believable that

[9] I credit Rienzie-Barry's undisputed testimony that Manley received an accommodation, and that any opportunities to improve were given because of this accommodation. Thus, Manley was not similarly situated to Hajewski, even though Respondent terminated them both during their probationary periods.

Respondent would decide to terminate Hajewski on the only day where her performance was inadequate, after only one instance of violating an enforced policy.[10]

Finally, Respondent treated probationary employees who did not take such an active and visible role in the strike more favorably than it treated Hajewski. Respondent was aware that probationary employees could not grieve their terminations. Five of the Circuit Clerk's nine probationary employees participated in the strike. Hajewski was the only probationary employee to take such a visible role in leading the chants at the picket line. Of these nine employees, Hajewski was the only one to Respondent discharged before completing her probationary period. This suggests that the reason for Hajewski's termination while on probationary status was her active role in the strike.

I therefore find that Respondent terminated Hajewski because of her protected union activity in order to encourage or discourage membership in or other support for any labor organization.

B. Respondent's Rebuttal to the Charging Party's *Prima Facie* Case

Respondent now has the opportunity so rebut the *prima facie* case by proving that it relied upon a legitimate business reason when it terminated Hajewski. See Pace Suburban Bus Div., 406 Ill. App. 3d at 500. As the Respondent correctly points out, when determining whether a reason is legitimate, it is not the Board's function or the function of its administrative law judges to substitute the agency's judgement for the employer's judgment in the discipline of public employees. State of Ill., Secretary of State, 31 PERI ¶7 (IL LRB-SP 2014); Cnty. of Rock Island, 14 PERI ¶2029 (IL SLRB 1998). However, where an employer appears to have taken a disputed adverse action for arbitrary, implausible, or unreasonable reasons, an administrative

[10] Respondent argues that former probationary employees' lengths of employment alone are sufficient for comparing its treatment of Hajewski to its treatment of previously terminated probationary employees. However, I find that comparing only the lengths of employment adds little towards determining whether Respondent acted with animus when it terminated Hajewski.

agency may properly infer that the stated rationale was not in fact the reason for the adverse action, and that the actual motivation was the employee's involvement in protected activities. State of Ill., Secretary of State, 31 PERI ¶7 (finding that because an employer's reason for discipline was plausible, it was not pretextual); Cnty. of Rock Island, 14 PERI ¶2029 (inferring unlawful motive where there was insufficient evidence indicating that the employee's actions violated any departmental rules or standards of conduct and where discipline appeared to have been imposed for arbitrary, implausible or unreasonable reasons); Cnty. of DeKalb and DeKalb Cnty. State's Attorney, 6 PERI ¶2053 (IL SLRB 1990).

In rebuttal, Respondent argues that its legitimate reason for terminating Hajewski was that she was not meeting her employer's expectations, and that it made this decision on November 14. This is not a rebuttal to the *prima facie* case, but simply a recitation of its defense. Since I have already rejected that argument by finding that Respondent's stated reason is implausible under the circumstances, and Respondent offers no additional arguments, I find that its proffered legitimate reason is pretextual, and Respondent did not rely upon it when it terminated Hajewski.

V. CONCLUSIONS OF LAW

Respondent violated Sections 10(a)(2) and (1) of the Act when it terminated probationary employee Cheryl Hajewski.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that Respondent, Will County Circuit Clerk, its officers, and agents shall:

1. Cease and desist from:
    a. Terminating employees because of their union activity.

b. Otherwise interfering with, restraining, or coercing employees in the exercise of rights guaranteed under the Act by terminating employees for engaging in protected union activity.

2. Respondent is ordered to immediately take the following affirmative steps to effectuate the policies of the Act:

   a. Offer to reinstate Cheryl Hajewski to her previous position.

   b. Make Cheryl Hajewski whole by paying her back pay plus interest at the rate of 7% per annum calculated from the date of her unlawful termination until the date of her reinstatement.

   c. Post for 60 consecutive days, at all places where notices to the employees of the Will County Circuit Clerk are regularly posted, signed copies of the attached notice.

   d. That Respondent is ordered to notify the Board, in writing within 20 days of the date of the Board's Order, of the steps that the Respondent has taken to comply herewith.

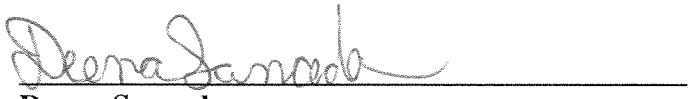
VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order in briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within seven (7) days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions, and cross-responses must be filed with Kathryn Nelson, General Counsel of the Illinois Labor Relation Board, at 160 North LaSalle Street, Suite S-400, Chicago, IL 60601-3103, and served on all other parties. Exceptions, responses, cross-exceptions, and cross-responses will not be accepted at the Board's

Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement of listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 30-day period, the parties will be deemed to have waived their exceptions.

Issued at Chicago, Illinois this 29th day of April, 2016.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL



Deena Sanceda
Administrative Law Judge

NOTICE TO EMPLOYEES

FROM THE

ILLINOIS LABOR RELATIONS BOARD

S-CA-14-123
Addendum

The Illinois Labor Relations Board, State Panel is charged with protecting rights established under the Illinois Public Labor Relations Act, 5 ILCS 315 (2012). The Board has found that the Will County Circuit Clerk has violated Section 10(a)(2) and(1) of the Act and has ordered us to post this Notice. We hereby notify you that the Illinois Public Labor Relations Act (Act) gives you, as an employee, these rights to:

- Engage in protected, concerted activity;
- Engage in self-organization;
- Form, join or assist unions;
- Bargain collectively through a representative of your own choosing;
- Act together with other employees to bargain collectively or for other mutual aid and protection;
- Choose to refrain from these activities.

Accordingly, we assure you that:

WE WILL NOT discrciminate against Cheryl Hajewski, or any other of our employees because of their protected union activity.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce its employees in the exercise of their rights guaranteed them under the Act.

WE WILL offer to reinstate Cheryl Hajewski to her previous position.

WE WILL make Cheryl Hajewski whole by paying her back pay plus interest at the rate of 7% per annum calculated from the date of her unlawful termination until the date of her reinstatement.

WE WILL Post for 60 consecutive days, at all places where notices to the employees of the Will County Circuit Clerk are regularly posted, signed copies of the attached notice.

WE WILL notify the Board, in writing within 20 days of the date of the Board's Order, of the steps that the Respondent has taken to comply herewith.

DATE _____

_____
Will County Circuit Clerk

ILLINOIS LABOR RELATIONS BOARD

One Natural Resources Way, First Floor
Springfield, Illinois 62702
(217) 785-3155

160 North LaSalle Street, Suite S-400
Chicago, Illinois 60601-3103
(312) 793-6400

THIS IS AN OFFICIAL GOVERNMENT NOTICE

AND MUST NOT BE DEFACED.