

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

Patrick Nelson,)	
)	
Charging Party)	
)	
and)	Case No. S-CA-14-185
)	
Chief Judge of the Circuit Court of Cook)	
County,)	
)	
Respondent)	

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

On June 26, 2014, Executive Director Melissa Mlynski dismissed a charge filed by Juvenile Probation Officer Patrick Nelson (Nelson or Charging Party) on April 1, 2014, which alleged that the Chief Judge of the Circuit Court of Cook County (Respondent) engaged in unfair labor practices within the meaning of Sections 10(a)(2) and (1) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012) (Act), when it allegedly violated Nelson’s rights under N.L.R.B. v. J. Weingarten, Inc., 420 U.S. 421 (1975).

The Charging Party filed a timely appeal of the Executive Director’s Dismissal pursuant to Section 1200.135(a) of the Board’s Rules and Regulations, 80 Ill. Admin. Code §1200.135(a).¹ The Respondent filed no response. After reviewing the record and appeal, we uphold the Executive Director’s Dismissal for the reasons stated in that document.

¹ The Charging Party also requests the appointment of counsel. We deny that request because the investigative stage of unfair labor practice proceedings does not involve legal formalities and the Charging Party has demonstrated an adequate ability to reason and articulate his position. Am. Fed’n of State, Cnty., and Mun. Empl., Council 31 (Hamilton), 28 PERI ¶ 139 (IL LRB-SP 2012).

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

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

/s/ Paul S. Besson
Paul S. Besson, Member

/s/ James Q. Brennwald
James Q. Brennwald, Member

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

/s/ Albert Washington
Albert Washington, Member

Decision made at the State Panel's public meeting in Chicago, Illinois on September 9, 2014, written decision issued in Chicago, Illinois on October 27, 2014.

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Chief Judge of the Circuit Court of)	
Cook County,)	
)	
Respondent)	

DISMISSAL

On April 1, 2014, Charging Party, Patrick Nelson, filed a charge with the State Panel of the Illinois Labor Relations Board (Board) in the above-captioned case, alleging that Respondent, Chief Judge of the Circuit Court of Cook County (Employer), violated Section 10(a) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2012), *as amended*. After an investigation conducted in accordance with Section 11 of the Act, I determined that the charge fails to raise an issue of law or fact sufficient to warrant a hearing and issue this dismissal for the reasons set forth below.

I. INVESTIGATORY FACTS

Respondent is a public employer within the meaning of Section 3(o) of the Act. American Federation of State, County and Municipal Employees, Council 31 (AFSCME or Union), is a labor organization within the meaning of Section 3(i) of the Act, and the exclusive representative of a bargaining unit of Respondent employees, including those in the title or classification of Juvenile Probation Officer (Unit). Charging Party, Patrick Nelson, is a public employee within the meaning of Section 3(n) of the Act, employed by Respondent in the title or

classification of Juvenile Probation Officer, and is a member of the Unit. Respondent and Union are parties to a collective bargaining agreement (CBA) which provides for a grievance procedure culminating in arbitration.

During a staff meeting, Nelson offered his thoughts during a discussion about a County program entitled "Jumpstart," a program designed to provide out-of-school delinquent minors with an opportunity to re-enter the educational system and work toward success. Nelson contends that he and other probation officers, following a suggestion by the Director of Probation and Court Services, Michael Rohan, offered to volunteer their services during off-duty hours to facilitate the program. In exchange for volunteering, they would receive compensatory time. When Nelson presented this proposal to his supervisor, Melissa Parise, she promptly denied the request claiming it was not properly submitted. The Union filed a grievance over the denial of the overtime opportunity. Nelson claims the grievance is pending; however, the Union has not provided input to this charge or the status of the grievance.

On or about March 14, 2014, Nelson was summoned to Parise's office to further discuss his comments at the staff meeting referenced above. Prior to entering the meeting with Parise, Nelson sought the advice of Chief Union Steward Jason Smith. Smith advised Nelson that if the meeting turned investigative, he needed to request the presence of a Union steward. Smith then spoke to Parise expressing Nelson's concerns, but Parise informed Smith that the meeting was not disciplinary and his presence was not necessary. Smith offered to be available to Nelson, but he did not provide further assistance, and he did not accompany Nelson to the meeting.¹

Upon arrival at the meeting, Nelson insisted on invoking his Weingarten rights, and requested Union representation. Parise informed Nelson that the meeting was neither investigatory nor disciplinary, and that the presence of a Union representative was not necessary.

¹ Neither the Union nor Smith participated in the filing of this charge.

Nevertheless, Nelson continued to insist that he wanted the presence of a Union representative. Again, Parise told Nelson that the meeting was not investigatory, but based on Nelson's insistence for representation, she cancelled the meeting. Charging Party claims that Parise treated him disrespectfully and refused to allow him to be assisted by a Union representative. Nelson was not disciplined.²

II. DISCUSSION AND ANALYSIS

In NLRB v. Weingarten, Inc., 420 U.S. 251 (1975), the United States Supreme Court held that an employer's denial of an employee's request that a union representative be present at an investigatory interview, which the employee reasonably believes might result in disciplinary action, constitutes an unfair labor practice in violation of Section 8(a)(1) of the National Labor Relations Act (NLRA), 29 U.S.C. §§151 et seq.³ The rationale behind the holding is that denial of an employee's request for union representation interferes with, restrains and coerces the employee who, in seeking the assistance of his union representative, seeks "mutual aid or protection" against a perceived threat to his employment security.

The Board adopted this reasoning in Morgan and State of Illinois, 1 PERI ¶2020 (IL SLRB 1985), wherein the Board held that an employee has a right to union representation when the following three circumstances exist: (1) the meeting between the employee and his superiors is investigatory; (2) the employee reasonably believes that disciplinary action may result; and (3)

² In correspondence from Nelson after the filing of the instant charge, and received by the Board Agent, Nelson complained of instances in which he was denied the use of his accumulated compensatory time. He claims Parise cited various rules dictating the manner in which compensatory time is used, and that he is the only person subjected to such scrutiny. He claims the Union has filed a grievance on his behalf. He further claims knowledge of abuse of hours of work by supervisory personnel and co-workers. He was advised to file a complaint with the County's Inspector General, and to file additional Board charges alleging the denial of the use of compensatory time allegedly in retaliation for invoking Weingarten.

³ Section 8(a)(1) of the NLRA provides that it is an unfair labor practice for an employer to interfere with, restrain or coerce employees in the exercise of the rights guaranteed in the NLRA, 29 U.S.C. §§158(a)(1). Section 8(a)(1) of the NLRA is very similar to Section 10(a)(1) of the Act which provides that it shall be an unfair labor practice for an employer or its agent to interfere with, restrain or coerce public employees in the exercise of the rights guaranteed therein.

the employee requests union representation. See also, City of Chicago (Department of Police), 5 PERI ¶3025 (1989); State of Illinois (Departments of Central Management Services and Employment Security), 4 PERI ¶2005 (IL SLRB 1988).

The employer is not obligated to automatically provide union representation upon request. NLRB v. Weingarten, Inc., 420 U.S. 251 (1975). The employer may deny the request, discontinue the interview, and obtain the sought-after information from other sources. Id.

Turning to the facts of the instant case, Charging Party has presented insufficient evidence of a Weingarten violation to raise an issue for hearing. There is no evidence that Parise interrogated or solicited information from Nelson. In fact, it appears that when Nelson insisted on the presence of a Union representative, Parise cancelled the meeting. Based on the foregoing, there is no basis for issuance of a complaint in this matter.

III. ORDER

Accordingly, the instant charge is hereby dismissed. Charging Party may appeal this dismissal to the Board at any time within 10 calendar days of service hereof. Any such appeal must be in writing, contain the case caption and number, and be addressed to the General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103. Appeals will not be accepted in the Board's Springfield office. In addition, any such appeal must contain detailed reasons in support thereof, and the party filing the appeal must provide a copy of its appeal to all other persons or organizations involved in this case at the same time the appeal is served on the Board. The appeal sent to the Board must contain a statement listing the other parties to the case and verifying that a copy of the appeal has been provided to each of them. An appeal filed without such a statement and verification will not be

considered. If no appeal is received within the time specified herein, this dismissal will become final.

Issued in Springfield, Illinois, this 26th day of June, 2014.

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A handwritten signature in black ink, appearing to read 'M Mlynski', is written over a solid horizontal line.

**Melissa Mlynski
Executive Director**