

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

Dwyane McCann,)	
)	
Charging Party)	
)	
and)	Case No. S-CA-14-189
)	
County of Will (Land Use Department),)	
)	
Respondent)	

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

On August 15, 2014, Executive Director Melissa Mlynski dismissed a charge filed by Charging Party Dwyane McCann alleging that Respondent, County of Will, Land Use Department (Will County), violated Section 10(a) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012) (Act), by actions it took in relation to McCann's employment with Respondent.

The Executive Director dismissed the charge after finding that some of the complained-of conduct was outside the six-month limitation period established in Section 11(a) of the Act. She further found that some of the timely filed claims were beyond the Board's jurisdiction, and that the Charging Party had failed to present evidence that the Respondent took action against him because he engaged in protected activity under the Act. 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. Adm. Code §1200.135(a), and the Respondent timely responded to the appeal.

On September 19, 2014, Charging Party filed a Motion to Strike the Respondent's response to the appeal, to which Respondent filed a response. After reviewing the Charging Party's motion and Respondent's response, we deny the motion the motion to strike.

Moreover, after reviewing the record, appeal, and response, we affirm the Executive Director's Dismissal for the reasons stated in that document.

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 October 7, 2014; written decision issued in Chicago, Illinois, October 27, 2014.

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DISMISSAL

On April 5, 2014, Dwyane McCann (Charging Party or McCann) filed a charge in Case No. S-CA-14-189 with the State Panel of the Illinois Labor Relations Board (Board), in which he alleged that the County of Will, Land Use Department (Respondent) engaged in unfair labor practices within the meaning of Section 10(a) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012) *as amended* (Act). After an investigation conducted in accordance with Section 11 of the Act, I determined that the charge fails to raise an issue of law or fact sufficient to warrant a hearing. I hereby issue this dismissal for the following reasons.

I. INVESTIGATORY FACTS AND POSITION OF THE CHARGING PARTY

Respondent is a public employer within the meaning of Section 3(o) of the Act. Prior to his discharge, the Charging Party was employed by Respondent. As such he was included in a bargaining unit (Unit) represented by the American Federation of State, County and Municipal Employees, Council 31 (Union). The Respondent and the Union are parties to a collective bargaining agreement (CBA) for the Unit that includes a grievance procedure culminating in final and binding arbitration.

The charge alleges that the Respondent violated the Act by unjustly terminating McCann on or about November 7, 2013. At the time of his discharge, Charging Party was on disability leave attempting to recover from a work related injury, and his workers' compensation claim was pending.

Charging Party was employed by the Respondent as a Building Inspector, but he was laid off on or about January 10, 2010. Charging Party is African American. He asserts that rather than allowing him to be recalled back to duty consistent with the CBA, the Respondent instead hired a Caucasian Building Inspector on or about July 1, 2011.

On or about April of 2013, Respondent recalled McCann back from his laid-off status and offered him the position of General Combination Inspector I. Subsequently, McCann was notified that Ray Semplinski would be his immediate supervisor and that McCann would have to obtain International Code Council (ICC) Certifications in Residential and Commercial Building Inspection within six months in order to fulfill the position.¹

The ICC examination was scheduled to take place on September 14, 2013. McCann claims that, initially, Semplinski provided him with outdated versions of the ICC Residential Building Code Book and the ICC International Mechanical Code Book. McCann made several requests for Semplinski to obtain the updated versions of the books. Semplinski allegedly told McCann that, due to budget constraints, he was unable to provide the updated books.

McCann states that, in or about July of 2013, Semplinski provided the updated books. However, McCann alleges that Semplinski provided Caucasian employees with hands-on field training but did not do the same for McCann. McCann further states that the Respondent provided Caucasian employees access to seminars, building code and mechanical inspection

¹ It appears that McCann was able to work as a General Combination Inspector I during a probationary period while the ICC examination was pending. Upon passing the examination, the probationary period would end and McCann would have fully attained the position.

classes, and other forms of assistance to enable them to acquire employment enhancement skills, but, again, these same opportunities were not offered to McCann. McCann states that, on or about September 14, 2013, he failed to pass the required ICC examination.

On or about September 25, 2013, McCann sustained a physical injury while on duty performing a plumbing inspection. Subsequently, McCann sought and received medical treatment from the Respondent's medical provider. McCann states that the medical provider released him and recommended that he return to work and be placed on light duty assignment. On or about September 26, 2013, McCann informed Semplinski that he was not feeling well and was going to see his physician. McCann claims that Semplinski told him he needed to report to duty the next day and that he would only have to man the office to answer telephone calls. McCann claims that, on the following day, Semplinski instead assigned McCann to perform a building inspection in Wheaton, Illinois.

While on duty and returning from the inspection in his work vehicle, McCann lost consciousness. Subsequently, he was transported by ambulance to the hospital for medical treatment, and he was held for further observation and treatment for two days. On or about October 2, 2013, after a series of follow-up treatments, the hospital's billing department asked the Respondent about the form of payment for McCann's follow-up physical examination. McCann alleges that the Respondent informed the hospital that the form of payment was not going to be workers' compensation related.

McCann states that, on or about October 7, 2013, he received notice from the Respondent confirming that he would be placed on light duty, that light duty assignments were available, and that he had been expected to report back to work on September 30, 2013.

On or about November 7, 2013, McCann was discharged for failure to obtain the ICC certifications within the specified timeline. On or about November 22, 2013, the Union filed a grievance on behalf of McCann regarding his discharge.

McCann claims that, prior to the Steps I and III grievance meetings regarding his discharge, he was not afforded written notification disclosing the date, time and location of the proceedings. He states that he was not given the opportunity to confer with Union representation to discuss and agree upon the nature of the issues being raised for review and consideration during the proceedings.² Following the Step III meeting, the Union voted not to advance McCann's grievance to arbitration.

As for his injury, McCann states that he timely applied for workers' compensation benefits, but the Respondent failed to comply with the Illinois Workers' Compensation Commission's Handbook in processing the benefits prior to December 19, 2013.

On or about December 19, 2013, a meeting was held concerning the workers' compensation claim. McCann states that a verbal agreement was reached between the Respondent's workers' compensation representative and McCann's legal counsel, which established that McCann would receive a five week Temporary Total Disability (TTD) advance check. McCann states that, on or about January 13, 2014, he received the TTD check. However, McCann received no further TTD checks between January 13, 2014 and February 28, 2014, and McCann subsequently learned that the TTD benefits were denied.

Overall, McCann alleges that the Respondent's conduct regarding his discharge and denial of TTD benefits were unreasonable under the Illinois Workers' Compensation and Occupational Disease Act, the Americans with Disabilities Act, and the Fourteenth Amendment

² McCann does not allege that the Respondent denied him this opportunity to confer with the Union. On April 8, 2014, McCann filed Case No. S-CB-14-025 against the Union, alleging that the Union failed to confer with him prior to the Steps I and III grievance meetings.

of the Constitution of the United States of America. He states that, to his detriment, he was deprived of the enforcement of contractual rights, civil rights, constitutional rights, and labor union membership rights.

By phone call on April 15, 2014, the Board agent assigned to this case explained to Charging Party the Board's jurisdiction under Section 10(a) of the Act. The Board agent asked the Charging Party to provide evidence to show that Respondent's conduct was connected in some way to McCann's exercise of rights under the Act. The Board agent advised the Charging Party that absent evidence of interference with his rights under the Act or retaliation for some activity protected by the Act, the Board would lack jurisdiction over this matter.

Charging Party sent the Board agent correspondence stating that the initial documents filed with the charge provide sufficient evidence to show that an unfair labor practice had occurred. This correspondence did not raise an argument that the Respondent's conduct involved Charging Party's rights under the Act.

II. DISCUSSION AND ANALYSIS

Section 11(a) of the Act provides that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of a charge with the Board and the service of a copy thereof upon the person against whom the charge was made." 5 ILCS 315/11(a) (2012). Since Charging Party filed his unfair labor practice charge on April 5, 2014, any incident occurring before October 5, 2013 is untimely, falling outside of the six month statutory time. Therefore, any allegations regarding irregularities with the recall process after McCann's 2010 layoff must be dismissed as untimely. Similarly, any allegations regarding discriminatory treatment in preparing for the September 2013 ICC examination, or the failure to

provide McCann with the proper training or materials to prepare for the exam, must also be dismissed as untimely.

While the portions of the charge that allege wrongful termination and wrongful denial of workers' compensation benefits are timely filed, these allegations must also be dismissed. This is because Charging Party has failed to provide evidence to establish how the Respondent's conduct referenced in the charge involved the Charging Party's exercise of rights under the Act. There is no evidence, or even an assertion, that the Respondent took action against the Charging Party because he engaged in protected activity under the Act.

Charging Party essentially claims that the Respondent's conduct violates the Illinois Workers' Compensation and Occupational Disease Act, the Americans with Disabilities Act, and the Constitution of the United States of America, but these claims are all beyond the jurisdiction of the Board. In addition, claims regarding race discrimination are also beyond the Board's jurisdiction in Section 10(a) cases. Based on the foregoing, the available evidence is insufficient to raise an issue for hearing in this case.

III. ORDER

Accordingly, the instant charge is hereby dismissed. The Charging Party may appeal this dismissal to the Board any time within 10 calendar days of service hereof. Such appeal must be in writing, contain the case caption and numbers and must be addressed to the Board's General Counsel, 160 North LaSalle Street, Suite S-400, Chicago, Illinois, 60601-3103. The appeal must contain detailed reasons in support thereof, and the Charging Party must provide it to all other persons or organizations involved in this case at the same time it is served on the Board. The appeal sent to the Board must contain a statement listing the other parties to the case and

verifying that the appeal has been provided to them. The appeal will not be considered without this statement. If no appeal is received within the time specified, this dismissal will be final.

Issued in Springfield, Illinois, this 15th day of August, 2014.

**STATE OF ILLINOIS
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STATE PANEL**



Melissa Mlynski, Executive Director