

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

American Federation of State, County, And Municipal Employees, Council 31,)	
)	
Charging Party)	
)	
and)	Case No. L-CA-10-032
)	
County of Cook and Sheriff of Cook County,)	
)	
Respondents)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On October 30, 2009, American Federation of State County and Municipal Employees, Council 31, (AFSCME or Union) filed a charge with the Illinois Labor Relations Board’s Local Panel (Board) alleging that County of Cook (Respondent or County) engaged in unfair labor practices within the meaning of Section 10(a)(1) of the Illinois Public Labor Relations Act 5 ILCS 315 (2010), as amended (Act). The charge was investigated in accordance with Section 11 of the Act and on March 15, 2011, the Executive Director of the Illinois Labor Relations Board (Board) issued a Complaint for Hearing.

A hearing was conducted on October 21 and November 4, 2011, in Chicago, Illinois, at which time AFSCME presented evidence in support of the allegations and all parties were given an opportunity to participate, to adduce relevant evidence, to examine witnesses, to argue orally and to file written briefs. After full consideration of the parties' stipulations, 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. The County is a public employer within the meaning of Section 3(o) of the Act.
2. The County is a unit of local government subject to the jurisdiction of the Board’s Local Panel pursuant to Section 5(b) of the Act.

3. The County is a unit of local government subject to the Act pursuant to Section 20(b) of the Act.
4. AFSCME is a labor organization within the meaning of Section 3(i) of the Act.
5. At all times material, AFSCME has been the exclusive representative of a bargaining unit comprised of certain of the County's employees in the title Sheriff's Police Officer.
6. At all times material, the County has employed Melissa C. Flores in the job classification of Sheriff's Police Officer.
7. At all times material, Flores was a member of the unit and a public employee within the meaning of section 3(n) of the Act.
8. At all times material, each of the following individuals occupied the position or title opposite their names and have been agents of the County, authorized to act on its behalf:

Deawyne Holbrook – Chief, Cook County Sheriff's Police

Anthony Brezezniak – Deputy Commander, Cook County Sheriff's Police

Richard Alvarado – Lieutenant, Cook County Sheriff's Police

9. On or about September 19, 2009, Lieutenant Richard Alvarado, summoned Flores to discuss her conduct during a recent arrest.
10. At the outset of the meeting, Flores requested union representation.
11. Following the meeting, Lieutenant Alvarado and Deputy Commander Anthony Brezezniak decided to suspend Flores for three days.
12. On or about September 24, 2009, Flores notified the County that she was grieving the suspension.
13. Flores's actions in paragraphs 12 and 15 of the complaint, her request for union representation at the September 19, 2009, meeting and her grievance of the suspension, are protected under the Act.
14. On or about September 27, 2009, Respondent terminated Flores's assignment in the Sheriff's Police Officer title, demoting and re-assigning her to the Correctional Officer title.

II. ISSUES AND CONTENTIONS

The issues are whether the County violated Section 10(a)(1) of the Act when it (1) denied Melissa Flores's request for union representation at a meeting on or about September 19, 2009; (2) suspended Melissa Flores for three days after that meeting; and (3) terminated Flores's assignment as a sheriff's police officer, demoting her to the correctional officer title, allegedly because of her request for union representation and her stated intent to grieve the suspension.

AFSCME argues that the County violated 10(a)(1) when it denied Flores's request for union representation at the September 19, 2009, meeting because the meeting was investigatory, Flores reasonably believed that discipline would result, and AFSCME did not clearly and unmistakably waive its members' rights to union representation under those circumstances.

In addition, AFSCME contends that the County violated 10(a)(1) of the Act when it suspended Flores because the County justified its decision by relying exclusively on information obtained in an unlawful manner. In the alternative, AFSCME asserts that the Board must infer that the County suspended Flores in retaliation for requesting union representation because her actions did not otherwise warrant discipline and because the County allegedly provided no legitimate explanation for its action.

Next, AFSCME argues that the County violated Section 10(a)(1) when it terminated Flores's assignment as a sheriff's police officer and demoted her to corrections because the timing of the County's adverse action, the inconsistency between the County's proffered reason for the demotion in light of documentary evidence, and County's allegedly shifting reasons for its actions, demonstrate anti-union animus.

Finally, AFSCME asserts that the Board must grant a make-whole remedy and reverse the County's adverse actions against Flores because they were allegedly based on information obtained during the unlawful interview and taken in retaliation for her protected activities.

The County argues that it did not violate Section 10(a)(1) when it denied Flores's request for union representation because AFSCME waived its members' rights to such representation during "informal inquiries" by incorporating the procedures of the Uniform Peace Officers' Disciplinary Act (UPODA) into the parties' collective bargaining agreement. In the alternative, the County notes that AFSCME must demonstrate anti-union animus to prevail on this claim and

that it cannot do so here because the County acted in accordance with the collective bargaining agreement and UPODA.

Next, the County contends that it did not suspend Flores because of her union activity and that she was instead disciplined for actual and serious misconduct, including violations of General Orders.

Finally, the County states that it did not violate section 10(a)(1) when it demoted Flores to corrections because she engaged in no protected activity: Flores's request for representation was not protected because she was not entitled to union representation under the collective bargaining agreement. Further, Flores did not actually file a formal grievance and merely expressed her intent to do so. Lastly, the County asserts that it demoted Flores for poor performance and that AFSCME demonstrated no anti-union animus.

III. FINDINGS OF FACT

In 2005, the Cook County Department of Corrections hired Melissa Flores as a correctional officer. In 2007, the County transferred Flores to a position as drill instructor in the Department's boot camp. On October 5, 2008, the Cook County Sheriff's Police hired Flores as a police officer and Flores began her one-year probationary period.

From January 6, 2009 to April 4, 2009, Flores participated in the Sheriff's Police Department's field training program. On April 5, 2009, Flores was assigned to patrol in Rolling Meadows (Third District) on the third watch (1400 hours/2pm to 2400/midnight). On that shift, Flores was supervised by Lieutenant Perciabosco, Lieutenant Collins, Sergeant Larry King, Sergeant Levido, and Commander Patrick Dwyer.¹ In August 2009, the County reassigned Flores to the first watch in Skokie (Second District) where she served under Sergeant Tammy Wuerffel and Lieutenant Richard Alvarado.

During the summer of 2009, Commander Dwyer received reports from his chain of command regarding Flores's poor performance. Sergeant Wuerffel, Lieutenant Alvarado, Sergeant King, Lieutenant Perciabosco, and Lieutenant Collins, all voiced concerns about Flores's personality, bad attitude and aggressiveness. In addition, Sergeant King and Flores's lieutenant complained to Dwyer about Flores's low self-initiated activity.

¹ The first names of Perciabosco, Collins and Levido do not appear in the record.

Patrol officers track their activity by noting the arrests they make, the calls they respond to, and any other duties they perform, on a daily activity sheet. A police officer has no control over the number of calls he receives over the radio. However, he may increase the numbers on his activity sheet by making self-initiated calls which include performing premises checks, investigations of suspicious activity and traffic enforcement. An officer has low-self-initiated activity if he is not actively policing by undertaking such tasks. If an officer does not see suspicious activity, speeders or erratic drivers there is nothing for the officer to report on the activity sheet.

Low activity among patrol officers is a common concern. Dwyer counseled all patrol officers on the Third District's patrol, third watch, for low activity. However, Dwyer testified that Flores's activity reports displayed a below-acceptable level of activity, far lower than that of the other recruits. While Flores did not have a radar gun with which to catch speeders, the record does not indicate whether the other patrol officers had radar guns, either.

Dwyer ultimately met with Flores a total of three times in response to her supervisors' complaints, once prior to June 16, 2009, and twice after that date, but before September 10, 2009. Dwyer had particular issue with the number of Flores's criminal arrests, traffic citations, and the way her police reports were written. He showed Flores her activity sheets, specifically those from July, when addressing her duties and performance. Dwyer testified that Sergeant King likewise counseled Flores regarding her low activity on June 16, 2009.

The Department's General Orders for the field training program set forth a formal counseling process by which the County may document a probationary officer's performance deficiencies. Dwyer never completed counseling forms after his meetings with Flores. He noted that the first meeting was informal and did not require such documentation. Further, he testified that he did not fill out the counseling forms after the subsequent meetings because that task was usually left to the sergeants or the supervisors who were in charge of the field training officer (FTO) program. Flores testified that she was counseled by Commander Dwyer for low activity only once, that she was never counseled by Sergeant King, Lieutenant Collins or DAC Brezeczniak, and that she received no negative counseling forms at all.

On August 31, 2009, Sergeant King issued Flores her 11-month report, a Cook County Sheriff's Police Department Probationary Police Officer Counseling Form. He stated that Flores "maintain[ed] a positive attitude towards her job," that her attendance and relationship with other

officers were excellent and that “her ability to handle situations on the street was outstanding for a new officer.” He concluded that Flores “always completed all necessary reports and paperwork in a timely, accurate and orderly manner.” The report was also signed by Lieutenant Collins.

On September 3, 2009, Commander Dwyer wrote a memo to Matthew Walsh, Deputy Chief of Patrol, regarding Flores’s 11th-month report. He noted that King’s evaluation of Flores contradicted her supervisors’ verbal assessments and that it altogether failed to note any of shortcomings which King himself had conveyed to Dwyer, earlier. For example, Dwyer recounted that, contrary to the written report, Sergeant King had told Dwyer that Flores displayed a negative attitude towards the job, that her activity was terrible and that he had even counseled Flores on her lack of activity.² The department counseled Sergeant King on his inaccurate 11th-month evaluation, but Dwyer did not direct King to change the report.

On September 10, 2009, Flores was assigned a call of “suspicious circumstances” at Dee Park at 3:47 am. She was designated the reporting officer and, as such, was responsible for events at the scene. Flores arrived at the Park 3:52 am. Three other squad cars responded to the call after her.³ Sergeant Wuerffel arrived at 3:55 am.

At Dee Park, Flores observed a suspicious man and young child in the park playground. Upon questioning, Flores determined they were father and daughter who were staying at a friend’s house with the child’s mother. Flores ran the subject’s name through the LEADS database, using radio communications, and found there was a warrant out for his arrest from Park Ridge for drug possession. Flores placed the man in custody.

Before taking the man to detainment, Flores walked the subject and his daughter back to the house to drop the daughter off with the mother.⁴ Another officer on the scene then searched the suspect in Flores’s presence and found a bag containing a small amount of marijuana in the subject’s pant pocket. Flores did not inventory the marijuana. Officer Hoeffler then drove the subject back to the park in his squad car so that Flores could transport him to detainment.

² Dwyer also referenced his own three meetings with Flores in that memo at which he discussed her low activity.

³ Skokie police follow a procedure called “wolf packing” where all squad cars automatically respond to the call even if they are not designated as the reporting officer.

⁴ Flores may have also been accompanied by Police Officer McIntyre and Sergeant Wuerffel. The record on this point is unclear.

During the arrest, Wuerffel stated that Flores and Luciano should transport the subject to Maywood. Officer Luciano then told Flores that arrestees with warrants out of Park Ridge are transferred to Park Ridge and not to Maywood, as Wuerffel had ordered. Officer Luciano called Wuerffel's supervisor, Lieutenant Alvarado, to ask him where they should transport the subject. Flores testified that Alvarado stated they should take him to Park Ridge. Flores transported the subject to Park Ridge. Sergeant Wuerffel later approved the transport and arrest.

On September 18, 2009, Flores began her shift at 2200 hours.⁵ After roll call, Sergeant Wuerffel informed Flores that she or Lieutenant Alvarado needed to speak with her. Flores met with both Sergeant Wuerffel and Lieutenant Alvarado, together, for approximately half an hour. At the outset of the meeting, Lieutenant Alvarado stated that the administration was seeking disciplinary action against Flores, concerning her conduct during the arrest on September 10, 2009. Alvarado did not notify Flores of the charges against her. Flores immediately requested union representation. Lieutenant Alvarado denied the request stating that probationary officers were not entitled to union representation.

The parties' collective bargaining agreement provides that "employees will be disciplined and [will] be entitled to representation consistent with the Bill of Rights 50 ILCS 725/1 et seq." Section 11.3, Disciplinary Rights, p. 22. The "Bill of Rights" (Uniform Peace Officers' Disciplinary Act) defines two modes of questioning: informal inquiry and formal investigation. Supervisory personnel conduct an "informal inquiry" when they meet with an officer and discuss facts of the officers' alleged misconduct to determine whether they should commence formal investigation.⁶ A "formal investigation" is the process by which supervisory personnel question an officer for the purpose of gathering evidence of misconduct which may be the basis for filing charges or seeking his removal, discharge or suspension in excess of 3 days.⁷ UPODA provides that an officer is not interrogated within the meaning of that Act during informal inquiry or

⁵ Flores was originally assigned to Rolling Meadows, but Sergeant Wuerffel instructed Flores to report to Skokie instead.

⁶ "Informal inquiry" means a meeting by supervisory or command personnel with an officer upon whom an allegation of misconduct has come to the attention of such supervisory or command personnel, the purpose of which meeting is to mediate a citizen complaint or discuss the facts to determine whether a formal investigation should be commenced. 50 ILCS 725/2(b) (2010).

⁷ "Formal investigation" means the process of investigation ordered by a commanding officer during which the questioning of an officer is intended to gather evidence of misconduct which may be the basis for filing charges seeking his or her removal, discharge or suspension in excess of 3 days. 50 ILCS 725/2(c) (2010).

during questioning which relates to minor infractions of agency rules which may not alone result in removal, discharge or suspension in excess of 3 days.⁸ UPODA also states that “the rights of officers in disciplinary procedures set forth under [UPODA] shall not diminish the rights and privileges of officers that are guaranteed to all citizens by the Constitution and laws of the United States and of the State of Illinois.” 50 ILCS 725/4 (2010). Finally, UPODA states that “if a collective bargaining agreement requires the presence of a representative of the collective bargaining unit during investigations, such representative shall be present during the interrogation, unless this requirement is waived by the officer being interrogated.” 50 ILCS 725/3.9 (2010).

During the meeting, Alvarado and Wuerffel asked Flores questions about her actions during the September 10, 2009, arrest and then directed her to draft a memo describing the event. Alvarado and Wuerffel asked her to revise it three times, either requiring her to add information or to change details. Flores finished the report at 6 am the next morning at the end of her shift on September 19 and was permitted to leave. She was instructed to return at 6:30 am that same day.

When Flores returned at 6:30 am, Lieutenant Alvarado handed her a Cook County Sheriff’s Police Department Report of Summary Discipline Action (RESDA) form concerning her conduct on September 10, 2009. A RESDA form is a request for discipline against an officer made by the officer’s supervisor which is forwarded up the chain of command for finalization. This form recommended that Flores receive a three-day suspension for breaking the chain of command, failing to follow orders, violating general and special orders, and failing to adhere to rules governing recovered property.

The RESDA explained that Flores broke the chain of command when she permitted Officer Luciano to call Wuerffel’s supervisor, Lieutenant Alvarado to ask him where they should transport the subject, while Wuerffel was still on the scene. At hearing, Flores testified that she did not break the chain of command because Sergeant Wuerffel had left early and was therefore no longer on duty when Luciano called Alvarado. In addition, Flores testified that Wuerffel back dated the arrest document to falsely reflect that she was on duty at the time.

⁸ “Interrogation” means the questioning of an officer pursuant to the formal investigation procedures of the respective State agency or local governmental unit in connection with an alleged violation of such agency’s or unit’s rules which may be the basis for filing charges seeking his or her suspension, removal, or discharge. The term does not include questioning (1) as part of an informal inquiry or (2) relating to minor infractions of agency rules which may be noted on the officer’s record but which may not in themselves result in removal, discharge or suspension in excess of 3 days. 50 ILCS 725/2(d) (2010).

Further, the RESDA noted that Flores failed to follow general orders which provide that an officer must follow a standing order unless it is unlawful or the supervisor later modifies it. Here, Sergeant Wuerffel directed Flores to take the subject to Maywood; Flores took the subject to Park Ridge instead. At hearing, Flores stated that she did not violate a standing order because Alvarado's clarification to take the subject to Park Ridge effectively overrode Wuerffel's order to take the subject to Maywood. Officer Francisco Ruiz testified that there are circumstances under which a police officer in the field might need to request clarification of a standing order and that doing so is not improper if that order is unclear. However, Ruiz also stated that there was nothing unclear about Sergeant Wuerffel's order.

Next, the form stated that Flores violated rules concerning recovered property which require an arresting officer to inventory drugs discovered on an arrestee during an arrest. Here, Flores did not inventory the seized marijuana. She explained that she did not do so because it was in Officer Luciano's possession, not hers.

Further, the RESDA stated that Flores violated general orders which require the arresting officer to take a subject directly to detainment. Here, Flores walked the arrestee home first. At hearing, Flores explained that she walked the subject home because she sought to return his daughter to the house and could not drive her there safely without a child seat.

Finally, the RESDA noted that Flores violated general orders which provide that arrestees who will be charged with a crime upon detainment must be taken to Maywood, not Park Ridge. Here, the arrestee was subject to a warrant, would be charged with a crime upon detainment, and thus should have been processed at Maywood. However, Flores transported him to Park Ridge. Flores testified that Alvarado told her to transport the subject to Park Ridge, but that Alvarado later required her to alter her written report to reflect that he instructed her to take the subject to Maywood instead.

When Flores received the RESDA on September 19, 2009, she notified Lieutenant Alvarado that the form contained mistakes and misinformation. She also informed Alvarado that she would grieve the matter. Alvarado told Flores to include the specific instances of the disciplinary form's alleged misinformation in her grievance. Flores then signed the RESDA and checked a box on the form indicating that she wanted to respond to the allegations. Flores understood this response to be part of the grievance process.

The Department later finalized and granted the request for discipline outlined in the RESDA form.

Sometime in September, Dwyer spoke to Chief Holbrook regarding Flores's performance in the workplace because her supervisors had complained of her low activity and bad attitude. Chief Holbrook stated that he would review the matter. Dwyer never conveyed to Chief Holbrook that Flores expressed a desire for union representation at the September 19, 2009, meeting. Indeed, Dwyer did not discuss the union at all in his conversation with Chief Holbrook regarding Flores's performance.

On September 25, 2009, Flores received phone messages from Lieutenant Perciabosco and Deputy Acting Commander (DAC) Brezezniak. When she returned, Lieutenant Perciabosco's call, he told her she would be sent back to the Department of Corrections to work as a drill instructor at boot camp, in the job title correctional officer. He instructed Flores to contact DAC Brezezniak who would explain the reasons for her transfer. Brezezniak informed Flores that the County decided to send her back to Corrections because of pending disciplinary action concerning the September 10 arrest, low activity and negative feedback from her third watch supervisors at Rolling Meadows.

Flores served as a sheriff's police officer through September 25, 2009. On September 28, 2009, Flores reported to her post at the Department of Corrections to serve as a drill instructor. Flores's transfer to Corrections constituted a demotion because her pay and pension decreased. John DiNicola, AFSCME staff representative, testified that he was not aware of any other police officer whose employment with the department was terminated prior to the completion of his probationary period.

On September 29, 2009, Flores returned her badge, shield, and ID card, to the Cook County Sheriff's Police Department's administrative offices in Maywood, and signed another copy of her disciplinary action form, at DAC Brezezniak's request, after speaking with her union representative.

That day, Flores also filed a "Cook County Sheriff's Police Department Petition for an Appeal Hearing" (Petition). DiNicola testified that he considered the Petition to be the first step of the grievance process based on the Employer's policies and practices even though it is not referenced as such in the parties' collective bargaining agreement. He explained that an officer files a formal grievance only if the petition does not succeed in overturning the discipline.

Section 12.4 of the parties' collective bargaining agreement states that a "grievance must be submitted on an approved Grievance Form attached herein as Appendix D." Flores never filled out an official grievance form as described under the collective bargaining agreement. The employer's past practice is to process grievances on other paper, including union stationary.

IV. DISCUSSION AND ANALYSIS

1. Weingarten Rights

i. Waiver

The County argues that Flores was not entitled to representation at the September 19 meeting because the union waived its employees' rights to union representations during "informal inquiries" by incorporating the Uniform Police Officer Disciplinary Act's (UPODA) provisions into the contract. Specifically, UPODA grants employees union representation only during "interrogation" and "formal investigation" but not during "informal inquiry," the type of questioning at issue here.

The Board recognizes that public employees' have *Weingarten* rights which entitle them to union representation at investigatory interviews that may lead to discipline. Morgan and State of Ill., 1 PERI ¶ 2020 (IL SLRB 1985). A union may waive employees' *Weingarten* rights in the collective-bargaining agreement; however, such waiver must be clear and unmistakable. Ehlers v. Jackson Cnty. Sheriff's Merit Commission, 183 Ill. 2d 83, 96 (1998)(finding waiver of *Weingarten* rights); Am. Fed. of State Cnty. and Mun Empl. v. State Labor Rel. Bd., 190 Ill. App. 3d 259 (1st Dist. 1989) (evidence supporting a claim of waiver must be clear and unmistakable); Vill. of Oak Park v. Ill. State Labor Rel. Bd., 168 Ill. App. 3d 7, 20-21 (1st. Dist. 1988); Metro. Edison Co. v. NLRB, 460 U.S. 693, 708 (1983) ("We will not infer from a general contractual provision that the parties intended to waive a statutorily protected right unless the undertaking is "explicitly stated"); Rockwell Int'l Corp., 260 NLRB 1346, 1347 (1988).

The Illinois Supreme Court has held that a union waives employees' *Weingarten* rights when the collective bargaining agreement expressly invokes UPODA, a statute which limits employees' union representation to interrogations and formal investigations, and mandates that any investigation or interrogation of employees be conducted in accordance with its terms.

Ehlers. 183 Ill.2d at 96.⁹ In other words, the court finds waiver only if the contract references both the specific rules which supersede the Act (UPODA) and the context to which representation is limited (investigations or interrogations). Id. (emphasizing the importance of both requirements by noting that “significantly, as to the first requirement, the word ‘interrogation’ is a term of art”). Applying the Illinois Supreme Court’s rationale, the Board has held that a union does not clearly and unmistakably waive employees’ *Weingarten* rights where either of those elements is missing. See, City of Ottawa, 25 PERI ¶ 43 (IL LRB-SP 2009), rev’d in part, on other grounds, by Unpub. Ord. No. 3-09-0365; Cnty. of Stephenson, 21 PERI ¶ 223 (IL LRB-SP 2005) (union did not waive *Weingarten* rights even though the contract required the employer to follow procedures “as currently established by state law” when undertaking “interrogation that could lead to actions such as discipline or discharge” because the contract “did not expressly limit such representation to *interrogations arising under UPODA*”) (emphasis added).

Here, the union did not clearly and unmistakably waive its members’ *Weingarten* rights by signing the collective bargaining agreement because the contract does not expressly limit employees’ right of representation to interrogations or investigations. Rather, the contract language merely provides that “employees will be disciplined and be entitled to representation *consistent with* the Bill of Rights [UPODA], 50 ILCS 725/1, et seq.” (emphasis added). While the clause does cite UPODA, it is silent with respect to interrogation or investigations, the triggering terms of art which the Ehlers court deemed necessary to find clear and unmistakable waiver. See, City of Ottawa, 25 PERI ¶ 43 (IL LRB-SP 2009) (no clear and unmistakable waiver of *Weingarten* rights where there was no specific contractual reference to one’s entitlement to union representation at an investigative interview); Cnty. of Stephenson, 21 PERI ¶ 223 (IL LRB-SP 2005) (no waiver where collective bargaining agreement did not expressly provide the right of union representation only during interrogations conducted pursuant to UPODA). As such, there is no waiver here.

⁹ The contract language in Ehlers stated that, “whenever a law enforcement employee is under investigation, or subjected to interrogation by the Sheriff’s Department, for any reason, which could lead to disciplinary action, or dismissal, the investigation or interrogation shall be conducted in accordance with the provision of the Uniform Peace Officers’ Disciplinary Act.”

Finally, contrary to the Employer's contention, the provisions of UPODA which grant employees union representation in formal investigations but not informal inquiries do not alone supersede the provisions of the Act absent the union's clear and unmistakable waiver of employees' *Weingarten* rights. 50 ILCS 725/1 et seq. See, City of Ottawa, 25 PERI ¶ 43 FN6 (IL LRB-SP 2009), rev'd in part, on other grounds, by Unpub. Ord. No. 3-09-0365;

ii. Interview, September 19, 2009

As noted above, Illinois public employees have the well-established right to union representation in meetings that might reasonably result in disciplinary action. Cnty. of Stephenson, 21 PERI ¶ 223 (IL LRB-SP 2005); Morris and State of Ill., Dep't of Cent. Mgmt. Serv. (Public Aid), 20 PERI ¶ 81 (IL LRB-SP 2004); City of Highland Park, 15 PERI ¶ 2004 (IL SLRB 1999); Gerald Morgan and State of Ill., Dep't of Cent. Mgmt. Serv. (Corrections), 1 PERI ¶ 2020 (IL SLRB 1985). The right arises only when the following three circumstances are present: (1) the meeting is investigatory; (2) the employee reasonably believes that disciplinary action may result and; (3) the employee makes a legitimate request for union representation. Cnty. of Stephenson, 21 PERI ¶ 223 (IL LRB-SP 2005); City of Aurora, 20 PERI ¶ 77 (IL LRB-SP 2004); City of Chicago (Dep't of Buildings), 15 PERI ¶ 9012 (IL LLRB 1999); City of Chicago (Dep't of Police), 5 PERI ¶ 3025 (IL LLRB 1989); State of Ill. (Dep'ts of Cent. Mgmt Serv. and Empl. Security), 4 PERI ¶ 2005 (IL SLRB 1988); Morgan and State of Ill., 1 PERI ¶ 2020 (IL SLRB 1985).

Once an employee makes a request for representation under these circumstances, the employer can (1) deny the request, discontinue the interview and obtain the information through other means; (2) wait until the union representative arrives before commencing with, or continuing, the interview or (3) request that the employee waive his right to union representation. Cnty. of Stephenson, 21 PERI ¶ 223 (IL LRB-SP 2005); Morris and State of Ill., Dep't of Cent. Mgmt. Serv. (Public Aid), 20 PERI 81 (IL LRB-SP 2004), Chicago Park Dist., 17 PERI ¶ 3012 (IL LLRB 2001), City of Chicago (Dep't of Aviation), 13 PERI ¶ 3014 (IL LLRB 1997). However, the Employer violates section 10(a)(1) of the Act if it simply denies the request and proceeds with the interview. Chicago Park Dist., 17 PERI ¶ 3012 (IL LLRB 2001).

It is undisputed that Flores requested union representation at the September 19, 2009, meeting. Further, it is clear that Flores reasonably expected discipline might result from her

disclosures because Alvarado explicitly informed her at the outset of the meeting that the department was considering disciplinary action. Cnty. of Stephenson, 21 PERI ¶ 223 (IL LRB-SP 2005) (reasonable belief of discipline where employer informed the employee in a letter before the meeting that discipline might result); Eisenberg/Chicago Transit Auth., 17 PERI ¶ 3018 (IL LRB-LP 2001) (applying objective test, measuring reasonableness in light of the circumstances); State of Ill. (Dep'ts of Cent. Mgmt. Serv. and Empl. Security), 4 PERI ¶ 2005 (IL SLRB 1988). Accordingly, the only matter at issue is the purpose of the interview.

An interview is investigatory if it is one where the employer seeks facts or evidence in support of the perceived misconduct; an interview is not investigatory if its sole purpose is to mete out previously-determined discipline. Eisenberg/Chicago Transit Auth., 17 PERI ¶ 3018 (IL LRB-LP 2001); State of Ill. Dep'ts of Cent. Mgmt Serv. and Empl. Security, 4 PERI ¶ 2005 (IL SLRB 1988).

Here, the purpose of Flores's interview was investigatory because Alvarado and Wuerffel asked Flores specific questions about her actions during the September 10 arrest to later justify the department's contemplated discipline. Cnty. of Stephenson, 21 PERI ¶ 223 (IL LRB-SP 2005)(meeting investigatory where purpose in having the meeting was to obtain information concerning employees alleged misconduct information that would aid employer in his decision concerning employee's future employment). As such, the County's interview placed Flores in the position of defending or incriminating herself and therefore qualifies as investigatory. Ill. Dep'ts of Cent. Mgmt. Serv. and Empl. Security (Regina Vaughn), 4 PERI ¶ 2010 (IL SLRB 1988) (interview is investigatory where employee must defend against allegation or risk incrimination).

Further, the interview was not disciplinary because the County had not reached a final, binding decision to impose certain discipline on Flores prior to the interview. Indeed, neither Alvarado nor Wuerffel notified Flores of the charges against her at the meeting and they imposed discipline only once Flores had submitted her written account of the incident, hours after the meeting had ended. Cf., State of Ill. Dep'ts of Cent. Mgmt. Serv. and Empl. Security, 4 PERI ¶ 2005 (IL SLRB 1988) (interview considered disciplinary where employee is simply informed of previously determined disciplinary action and the employer conducted no further interrogation); See also, City of Chicago (Dep't of Buildings), 15 PERI ¶ 3012 (IL LLRB ALJ 1999) (interview

was not investigatory where employee had already signed the notice of discipline prior to meeting and employer's decision was final).

Thus, Flores's *Weingarten* rights attached at the September 19 interview and the County's categorical denial of such representation violated section 10(a)(1) of the Act.

Contrary to the Employer's contention, AFSCME need not prove anti-union animus to prevail on its claim here because the County's failure to grant Flores's request for union representation does not itself constitute an adverse employment action requiring an evaluation of the employer's motivation. PACE Northwest Division, 25 PERI ¶ 188 (IL LRB-SP 2009) (Board does not examine employer's motivation in a 10(a)(1) allegation unless the allegation concerns an employer's adverse employment action); Vill. of Oak Park, 18 PERI ¶ 2019 (IL SLRB 2002). The County's motivation is relevant only to determine the remedy and the lawfulness of its subsequent actions.

iii. Three-day Suspension and Remedy

An Employer violates 10(a)(1) of the Act when it denies employees their *Weingarten* rights, as the County has here. See supra. In such cases, make-whole relief is appropriate where: (1) an employer's decision to discharge or discipline was "predominantly dependent" upon information obtained through the unlawful interview or where (2) an employer takes adverse action against an employee in retaliation for asserting his right to union representation. Cnty. of Stephenson, 21 PERI ¶ 223 (IL LRB-SP 2005); Teamsters, Local 714/City of Highland Park, 15 PERI ¶ 2004 (IL SLRB 1999); City of Chicago (Dep't of Aviation), 13 PERI ¶ 3014 (IL LLRB 1997). However, a Notice of Posting is the only appropriate remedy where an employer has sufficient independent evidence of employee wrongdoing, apart from the wrongful interview, to warrant an employee's discipline. Chicago Park Dist., 17 PERI ¶ 3012 (IL LLRB 2001) (make-whole remedy not appropriate where pre-suspension meeting added nothing to the evidence the Respondent already had prior to that meeting and where employee's admission of wrongdoing was already supported by statements from other employees, previously gathered by the employer); Illinois Dep't of Cent. Mgmt. Serv., 16 PERI ¶ 2023 (IL SLRB 2000); City of Chicago (Dep't of Aviation), 13 PERI ¶ 3014 (IL LLRB 1997).

Here, Flores must be made whole for the three-day suspension because the County's decision to discipline was "predominantly dependent" upon information obtained through the

unlawful interview. Indeed, there is no evidence in the record that the County undertook any independent investigation of the arrest at all and that it instead imposed the three-day suspension solely based on Flores's responses at the interview.

Contrary to the Union's contention, however, the County's decision to discipline Flores was independently motivated and unrelated to Flores's request for representation.¹⁰ The employer's unlawful motive may be established by direct or circumstantial evidence, including the timing of the employer's action in relation to the protected activity, the employer's expressed hostility toward unionization, disparate treatment between union employees and other employees, inconsistent reasons between the employer's proffered reasons for the adverse action and other actions of the employer, shifting explanations for the adverse employment action, and a pattern of targeting union supporters. City of Burbank, 128 Ill. 2d at 345. If a charging party establishes a prima facie case, the employer can avoid a finding that it violated the Act by demonstrating that it would have taken the same action for legitimate reasons even in the absence of the protected activity. Id. However, merely proffering a legitimate business reason for the adverse action will not satisfy a respondent's burden. Id. It must first be determined whether the employer's reasons for the adverse treatment are bona fide or pretextual. Id.

Here, AFSCME presented insufficient circumstantial evidence from which to infer unlawful motivation. While the County suspended Flores shortly after her request for union representation, the timing of the discipline with respect to Flores protected activity does not alone warrant a finding of causation or anti-union animus. Am. Fed. of State, Cnty. & Mun. Empl., Council 31 v. Ill. State Labor Rel. Bd., 175 Ill. App. 3d 191, 197-199 (1st Dist. 1988)(timing alone is not enough to warrant anti-union motivation); State of Ill., Dep't of Cent. Mgmt. Serv., (Dep't of Corrections), 11 PERI ¶ 2037 (IL SLRB 1995).

Moreover, the County provided a plausible, legitimate and non-arbitrary business reason for imposing the three-day suspension: Flores's violation of orders and rules. Under such circumstances, it is "not the function of the Board or its administrative law judges to substitute

¹⁰ To prove an Employer violated 10(a)(1) by taking adverse action against an employee in retaliation for his protected activity, a charging party must show by a preponderance of the evidence, that (1) he was engaged in union or protected concerted activity; (2) the employer knew of his conduct; and (3) the employer took the action against him in whole or in part because of antiunion animus or was motivated by his protected conduct. City of Burbank v. Ill. State Labor Rel. Bd., 128 Ill. 2d 335 (1989); Chicago Park Dist., 7 PERI ¶ 3021 (IL LLRB 1991) (applying the Burbank court's 10(a)(2) analysis to 10(a)(1) cases which allege an adverse employment action). Only the last prong is at issue here.

this agency's judgment for that of the employer in the discipline of public employees.” Cnty. of Rock Island and Sheriff of Rock Island Cnty, 14 PERI ¶ 2029 (IL SLRB 1998)(inferring unlawful motive only where there was lack of evidence indicating that deputy's actions contravened any rules or standards of conduct for sheriff's department employees and where disciplinary action appeared to have been taken on arbitrary, implausible or unreasonable grounds) aff'd, 315 Ill. App. 3d 459 (3rd Dist. 2000); see also, Cnty. of DeKalb, 6 PERI ¶ 2053 (IL SLRB 1990), aff'd, (2nd Dist. 1991), unpub. Ord. No. 2-90-1309. Indeed, AFSCME has presented no compelling reasons to disturb the County's findings and instead objects to Flores's suspension based on matters within the employer's purview: (1) the County's credibility determinations and (2) the County's rejection of Flores's justifications for her actions.

First, the Union effectively asserts that the County should have believed Flores's account of the arrest instead of believing her supervisor's. However, the County reasonably credited Sergeant Wuerffel's assertion that she was in fact still on the scene when Flores called¹¹ Lieutenant Alvarado for clarification of an order and that Flores broke the chain of command, as a result. Further, the County was entitled to credit Lieutenant Alvarado's statement that he directed Flores to take the arrestee to Maywood and that Flores consequently violated that directive by transporting him to Park Ridge. Similarly, the County legitimately found that Flores violated general orders by transporting an arrestee under warrant to Park Ridge instead of Maywood, as required by the County's rules, despite Flores's assertion that Alvarado gave alternate instructions.

Next, the union argues that the County should have accepted Flores's justifications and excuses. However, the County was entitled to find Flores's call to Lieutenant Alvarado violated a standing order, despite Flores's assertion that she merely sought a permissible clarification, because Sergeant Wuerffel's earlier order was clear. Likewise, the County was entitled to reject Flores's excuse for walking the arrestee home with his daughter when general orders require an arrestee to be taken directly to detainment, particularly absent evidence that the County formally condoned such action in other specific cases. Finally, the County reasonably found that Flores violated general orders when she failed to inventory the seized marijuana and

¹¹ Though Officer Luciano actually dialed the number to call Sergeant Alvarado and spoke with him, Flores was reporting officer and was responsible for Luciano's call, as if it had been her own.

permissibly rejected her position that she did not do so because another officer had it in his possession.

Thus, the County did not suspend Flores in retaliation for her request for union representation; however, the County must nevertheless make Flores whole for the suspension because the County based its decision to suspend predominantly on information gathered from an unlawful interview.

2. Demotion to Corrections

The County did not violate section 10(a)(1) of the Act when it demoted Flores to the position of corrections officer because there is no indication from the record that it took such action because of Flores's protected activity.

Section 10(a)(1) of the Act prohibits public employers and their agents from interfering with, restraining or coercing public employees in the exercise of their rights under the Act. A public employer violates Section 10(a)(1) of the Act if it engages in conduct that reasonably tends to interfere with, restrain or coerce employees in the exercise of rights protected by the Act. Vill. of Ford Heights, 26 PERI ¶ 145 (IL LRB-SP 2009); Cnty. of Woodford, 14 PERI ¶ 2017 (IL SLRB 1998); Vill. of Elk Grove Vill., 10 PERI ¶ 2001 (IL SLRB 1993); Clerk of Circuit Court of Cook Cnty., 7 PERI ¶ 2019 (IL SLRB 1991); State of Ill., Dep't of Cent. Mgmt. Serv. (Dep't of Conservation), 2 PERI ¶ 2032 (IL SLRB 1986). The applicable test in determining whether a violation has occurred is whether the employer's conduct, when viewed objectively from the standpoint of an employee, had a reasonable tendency to interfere with, restrain or coerce employees in the exercise of the rights guaranteed by the Act. Cnty. of Woodford, 14 PERI ¶ 2017 (IL SLRB 1998). There is no requirement of proof that the employees were actually coerced or that the employer intended to coerce the employees. Vill. of Ford Heights, 26 PERI ¶ 145 (IL LRB-SP 2009).

Although the public employer's motive or intention is usually not considered in the context of a Section 10(a)(1) violation, if an alleged adverse employment action is taken against an employee for engaging in protected, concerted or union activity under the Act, as alleged in this case, the public employer's motivation is examined in the same manner as in cases arising under Section 10(a)(2) of the Act. Chicago Park Dist., 7 PERI ¶ 3021 (IL LLRB 1991). Under Section 10(a)(2) of the Act, a charging party must show, by a preponderance of the evidence, that (1) he was engaged in union or protected concerted activity; (2) the employer knew of his

conduct; and (3) the employer took the action against him in whole or in part because of anti-union animus or that it was motivated by his protected conduct. City of Burbank, 128 Ill. 2d at 345.

As noted above, the employer's unlawful motive may be established by direct or circumstantial evidence, including the timing of the employer's action in relation to the protected activity, the employer's expressed hostility toward unionization, disparate treatment between union employees and other employees, inconsistent reasons between the employer's proffered reasons for the adverse action and other actions of the employer, shifting explanations for the adverse employment action, and a pattern of targeting union supporters. City of Burbank, 128 Ill. 2d at 345. If a charging party establishes a prima facie case, the employer can avoid a finding that it violated the Act by demonstrating that it would have taken the same action for legitimate reasons even in the absence of the protected activity. Id. However, merely proffering a legitimate business reason for the adverse action will not satisfy a respondent's burden. Id. It must first be determined whether the employer's reasons for the adverse treatment are bona fide or pretextual. Id.

Here, Flores was engaged in protected concerted activity when she requested union representation at the September 19 meeting and when she informed Alvarado that same day that she planned to file a grievance over the three-day suspension.¹² See discussion supra; City of Chicago, 3 PERI ¶ 3028 (IL LLRB 1987) (noting that filing of a grievance is protected concerted activity and that employer violated 10(a)(1) when it threatened reprisals against employee who stated an intention to file one), see also, Palatine Rural Fire Protection Dist., 21 PERI ¶ 107 (IL LRB-SP 2005) (considering the date on which employer knew of employee's intent to file a grievance in determining whether the Employer had violated the act by taking adverse action); State of Ill., Dep't of Cent. Mgmt. Serv., (Dep't of Public Aid), 11 PERI ¶ 2026 (IL SLRB 1995) (considering whether employer violated 10(a)(1) by allegedly harassing employee for merely mentioning that he would file a grievance; upholding dismissal on other grounds).

Further, the County knew of Flores's conduct because Flores told her supervisors that she wanted union representation at the interview and that she intended to grieve her suspension.

¹² It is unnecessary to determine whether Flores's "Petition for Appeal" qualified as a formal grievance under the parties' collective bargaining agreement because Flores engaged in protected activity simply by announcing her intent to file a grievance.

However, there is no causal connection between Flores's protected activity and the County's decision to demote her. Rather, the evidence demonstrates that the County's decision was not colored by anti-union animus and that it was instead motivated solely by Flores's unsatisfactory job performance, judged by several measures: her low activity, her bad attitude and the fact that she violated several orders during an arrest on September 10, 2009. Indeed, the only nexus between the demotion and Flores's protected activity is temporal proximity which, alone, is insufficient to demonstrate causation or anti-union animus. Am. Fed. of State, Cnty. & Mun. Empl., Council 31, 175 Ill. App. 3d at 197-199; State of Ill., Dep't of Cent. Mgmt. Serv., (Dep't of Corrections), 11 PERI ¶ 2037 (IL SLRB 1995). Thus, the fact that Flores was demoted less than a week after she requested union representation and informed Lieutenant Alvarado that she planned to file a grievance does not itself satisfy the union's prima facie case.

Contrary to the Union's assertions, the County's reasons for demoting Flores are legitimate. First, Commander Dwyer counseled Flores three times over the summer for low activity and Sergeant King counseled her once.¹³ Further, according to Dwyer's undisputed testimony, Flores's supervisors repeatedly complained to him of her bad attitude. Notably, Sergeant King's positive evaluation of Flores does not undercut these negative reports because the County disavowed King's evaluation by counseling him for the inaccuracies it contained. Even if King's evaluation is credited as the County's position, it does not mandate an inference that the County demoted Flores out of anti-union animus because Dwyer received other reports of Flores's poor performance and documented them before she engaged in union activity. See, City of Decatur, 14 PERI ¶ 2004 (IL SLRB 1997) (reports of employee's poor performance which predate protected activity undermines argument that the protected activity motivated the employer's negative reports). Lastly, as discussed above, Flores's actions during the September

¹³ I credit Commander Dwyer's testimony that he counseled Flores regarding low activity three times during the summer and not just once, as Flores asserts. Similarly, I credit Dwyer's testimony that King counseled Flores once on June 16, 2009, over Flores's statement that King never counseled her at all. Though there are no forms which document these counselings, as required by departmental procedure, the fact that Dwyer referenced the counselings in a memo drafted prior to Flores's union activity supports the credibility of his statements because it forecloses the possibility that he mischaracterized Flores's performance out of anti-union animus. City of Decatur, 14 PERI ¶ 2004 (IL SLRB 1997) (No causal connection between protected activity and employer's discharge of employee at the end of the probationary period where reports of employee's poor performance occurred before she engaged in protected activity).

10 arrest provided a plausible basis from which the County could determine that Flores violated orders.

Notably, the fact that low activity is a common complaint among police officers, generally, does not demonstrate the County treated Flores disparately when it demoted her because AFSCME provided no evidence that similarly situated employees were treated differently. See, Am. Fed. of State, Cnty. and Mun. Empl., Council 31, 175 Ill. App. 3d at 198; City of Decatur, 14 PERI ¶ 2004 (IL SLRB 1997) (charging party bears the burden of demonstrating that employees who allegedly committed similar offenses, but had not engaged in union or protected concerted activity, were not similarly disciplined). Indeed, Flores's performance was uniquely inadequate because her reports display a level of activity far below the rest of the recruits. Further, while the County did not provide Flores with a radar gun for regular use, there is no evidence that the other probationary officers had them, either. Even if Flores was the only probationary employee lacking a radar gun, AFSCME did not show that this single distinction explained the shortfall in Flores's activity.

Finally, while the Employer offered a number of reasons for demoting Flores, they are not shifting in nature and instead represent different, cumulative aspects of an employee's unsatisfactory job performance—low activity, bad attitude, and failure to follow proper procedures during an arrest. Thus, AFSCME has not met its prima facie burden to demonstrate that the County demoted Flores because of anti-union animus.

i. Remedy for Demotion

Further, contrary to the union's contention, make-whole relief is not warranted here even though Flores was demoted in part because of information obtained by the County during an unlawful interview. Make-whole relief is appropriate where an employer's decision to discharge or discipline was "predominantly dependent" upon information obtained through an unlawful interview.¹⁴ Cnty. of Stephenson, 21 PERI ¶ 223 (IL LRB-SP 2005); Teamsters, Local 714/City of Highland Park, 15 PERI ¶ 2004 (IL SLRB 1999); City of Chicago (Dep't of Aviation), 13

¹⁴ Make-whole relief is also warranted where an employer takes an adverse action against an employee in retaliation for asserting his right to union representation. Cnty. of Stephenson, 21 PERI ¶ 223 (IL LRB-SP 2005); Teamsters, Local 714/City of Highland Park, 15 PERI ¶ 2004 (IL SLRB 1999); City of Chicago (Dep't of Aviation), 13 PERI ¶ 3014 (IL LLRB 1997). However, as noted above, there is insufficient evidence to show that the County demoted Flores in retaliation for asserting her right to union representation. Accordingly, this factor is not at issue and is not addressed below.

PERI ¶ 3014 (IL LLRB 1997). Here, however, the County relied on other markers of Flores's poor performance to make its decision: Flores's bad attitude and low activity. Indeed, the repeated complaints by Flores's supervisors concerning these issues and Flores's uniquely poor activity levels together demonstrate that these legitimate reasons, standing alone, were sufficient to support the County's decision to demote her. City of Burbank, 128 Ill. 2d at 346 (employer must show that its legitimate reason, standing alone, would have induced it to take the specific adverse action at issue); Williamson Cnty. and Sheriff of Williamson Cnty., 14 PERI ¶ 2016 (IL SLRB 1998); City of Lyons, 5 PERI ¶ 2007 (IL SLRB 1989). See also Mississippi Transport Inc. v. NLRB, 33 F.3d 972 (8th Cir. 1994); NLRB v. Advance Transportation Co., 979 F.2d 569 (7th Cir. 1992).

Finally, the status of Flores as a probationary employee also forecloses a make-whole remedy. A probationary police officer's employment may be terminated for any reason; he has no entitlement to continued employment during his probationary period and is not entitled to a determination of just cause for discharge. Ragon v. Daughters, 239 Ill. App. 3d 533, 535 (3rd Dist.1992); Romaniski v. Bd. of Fire & Police Commissioners, 61 Ill. 2d 422, 425 (1975). Drawing from these principles, the appellate court in a non-precedential order held that because a probationary employee may be summarily dismissed, his dismissal need not be "dependent" upon anything, under the remedy framework set forth above. City of Ottawa v. Ill. Labor Rel. Bd., State Panel, 2011 WL 246814, Unpub. Ord. No. 3-09-0365 (3rd Dist. 2011) (reversing the Board which held that probationary employee should be reinstated when his discharge was "predominantly dependent" upon information obtained in an unlawful interview). As such, an employer's justifications for dismissing a probationary employee cannot warrant a make-whole remedy, even if those justifications are supported by information obtained unlawfully, in violation of the Act. Id. Applying the appellate court's rationale here, the County had a right to demote Flores back to corrections before the end of her probationary period, regardless of its justifications. Thus, although the County wrongfully denied Flores union representation in violation of the Act, a make-whole remedy is nevertheless inappropriate here.

V. CONCLUSIONS OF LAW

1. The County violated Section 10(a)(1) of the Act when it denied Melissa Flores's request for union representation on or about September 19, 2009.
2. The County violated Section 10(a)(1) of the Act when it suspended Melissa Flores for three days based predominantly on information obtained from the unlawful interview.
3. The County did not violate Section 10(a)(1) of the Act when it terminated Flores's assignment as a sheriff's police officer, demoted her and reassigned her to the correctional officer job title.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that Respondent, its officers and agents, shall:

- 1) Cease and desist from:
 - a. In any like or related manner, interfering with, restraining, or coercing employees in the exercise of rights guaranteed them in the Act.
- 2) Take the following affirmative action necessary to effectuate the policies of the Act:
 - a. Make whole Melissa Flores, represented by American Federation of State County and Municipal Employees, Council 31, for the three-day suspension based predominantly upon information obtained from the unlawful interview, with interest thereon in accord with Section 11(c) of the Act.
 - b. Post, at all places where notices to employees are normally posted, copies of the Notice attached to this document. Copies of this Notice shall be posted, after being duly signed, in conspicuous places, and be maintained for a period of 60 consecutive days. The Respondent will take reasonable efforts to ensure that the notices are not altered, defaced or covered by any other material.
- 3) Notify the Board in writing, within 20 days from the date of this Decision, of the steps the Respondent has taken to comply with this order.

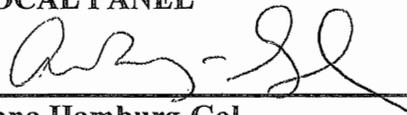
VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and 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 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 the Board's General Counsel at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 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 30th day of January, 2012

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



**Anna Hamburg-Gal
Administrative Law Judge**

NOTICE TO EMPLOYEES

FROM THE ILLINOIS LABOR RELATIONS BOARD

The Illinois Labor Relations Board, State Panel, has found that the County of Cook and Sheriff of Cook County have violated the Illinois Public Labor Relations 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 self-organization
- To form, join or assist unions
- To bargain collectively through a representative of your own choosing
- To act together with other employees to bargain collectively or for other mutual aid and protection
- To refrain from these activities

Accordingly, we assure you that:

WE WILL cease and desist from in any like or related manner, interfering with, restraining, or coercing employees in the exercise of rights guaranteed them in the Act.

WE WILL Make whole Melissa Flores, represented by American Federation of State County and Municipal Employees, Council 31, for the three-day suspension imposed based predominantly on the information obtained from the unlawful interview, with interest thereon in accord with Section 11(c) of the Act.

DATE _____

County of Cook and
Sheriff of Cook County
(Employer)

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.
