STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Rahkal Shelton,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. L-CA-11-062
	)	
County of Cook, Health & Hospital Systems,	)	
	)	
	)	
Respondent	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On May 18, 2011, Rahkal Shelton filed a charge in Case No. L-CA-11-062 with the Local Panel of the Illinois Labor Relations Board (Board) alleging that the County of Cook, Health & Hospital Systems (Respondent) engaged in an unfair labor practice within the meaning of Section 10(a) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012) as amended (Act). The charge was investigated in accordance with Section 11 of the Act and the Rules and Regulations of the Board, 80 Ill. Admin. Code, Parts 1200 through 1240 (Rules). The Board's Executive Director issued a Complaint for Hearing on September 26, 2012.

The case was heard on January 29, 2014 by the undersigned. Both parties appeared at the hearing and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally. Written briefs were timely filed on behalf of both parties. 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

1. At all times material, the Respondent has been a public employer within the meaning of Section 3(o) of the Act.
2. At all times material, the Respondent has been subject to the jurisdiction of the Board's Local Panel pursuant to Section 5(b) of the Act.
3. At all times material, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME) has been a labor organization within the meaning of Section 3(i) of the Act.
4. Since on or about April 27, 2012, AFSCME has been the exclusive representative of a bargaining unit comprised of certain of the Respondent's employees in the job title or classification of computer operator III and telephone operator IV (Oak Forest Health Center); respiratory therapy supervisor (Stroger Hospital).
5. At all times material, the Respondent employed Dr. Robert Cohen in the title of Chairman of the Department of Pulmonary, Critical Care and Sleep Medicine.
6. At all times material, the Respondent employed Deborah Tate in the title of Director of Human Resources.
7. At all times material, the Respondent has employed Shelton in the title or job classification of respiratory therapy supervisor.
8. At all times material, Shelton was a public employee within the meaning of Section 3(n) of the Act.
9. On or about March 21, 2011, the Respondent terminated Shelton's employment.

II. ISSUES AND CONTENTIONS

Shelton contends that the Respondent violated Sections 10(a)(1) and (2) of the Act when it terminated her employment in retaliation for engaging in union activity. The Respondent denies that contention.

III. FINDINGS OF FACT

Audrea Hardwicks-Williams and Shelton started working for the Respondent in the John H. Stroger, Jr. Hospital as respiratory therapy supervisors in June of 2010. Together, the two supervised the hospital's respiratory therapists who worked during the night shift. In addition to Hardwicks-Williams and Shelton, the hospital employed two other respiratory therapy supervisors – Philip Elackattu and Betty Gary. Elackattu and Gary supervised the respiratory therapists who worked during the day shift.

Initially, all four respiratory therapy supervisors reported directly to Yvonne Marante, their department's technical director. Marante reported directly to Dr. Shirin Muzaffar, the department's medical director, who in turn reported directly to Dr. Robert Cohen, the department's chairman. The respiratory therapy supervisors were not part of a bargaining unit when Hardwicks-Williams and Shelton started at the hospital.

Around the time of Hardwicks-Williams' and Shelton's hire, the respiratory therapy supervisors were asked by their superiors to implement a number of initiatives. Those initiatives would require the respiratory therapists to perform several new tasks and would have the respiratory therapists appropriately disciplined when they caused problems. The night shift's respiratory therapists (who had previously worked without onsite supervision) were resistant to the changes.

At the end of October of 2010, Shelton informed Dr. Muzaffar that she was being paid less than she had been by her previous employer, and about a week later, Shelton told Dr. Muzaffar that she was considering leaving the hospital because of the lower pay rate. Around that time, it was also discovered that the respiratory therapy supervisors of the day shift were paid more than those of the night shift. Hardwicks-Williams' and Shelton's pay rate was later adjusted on November 18, 2011. Officially, it was not a merit-based raise.

In late December of 2010, a union steward approached Shelton, told Shelton that the respiratory therapy supervisors could form a union, and handed Shelton blank union authorization cards. Subsequently, Shelton approached the other three respiratory therapy supervisors about organizing a bargaining unit and gave each a card to fill out. By the end of the month, she had collected a signed card from every respiratory therapy supervisor. Shelton later returned the four cards to the steward in January of 2011, and AFSCME filed the affiliated majority interest representation/certification petition on January 25, 2011. Shelton never discussed her union-related activity with any of her superiors.

On January 17, 2011, Marante and Muzaffar received an e-mail that was written on behalf of nine of the night shift's respiratory therapists. The e-mail alleged that Hardwicks-Williams and Shelton were not taking assignments and were not treating respiratory therapists with respect. Their allegations were subsequently repeated to Dr. Muzaffar in person. Marante and Dr. Muzaffar eventually discussed the e-mail with Hardwicks-Williams and Shelton, and the two respiratory therapy supervisors were given a chance to provide their sides of the story.

Marante formally responded to the respiratory therapists' e-mail on January 27, 2011. In that response, Marante specifically addressed each of the respiratory therapists' concerns and generally defended Hardwicks-Williams' and Shelton's work. Her e-mail also provided Dr.

Muzaffar's response, which indicated, in part, that Dr. Muzaffar had confidence in Hardwicks-Williams and Shelton.

Marante left the employment of the Respondent at the beginning of February of 2011. At that point, Dr. Muzaffar became the respiratory therapy supervisors' direct superior. On February 3, 2011 (after Marante's departure), Dr. Muzaffar sent the four respiratory therapy supervisors an e-mail. The e-mail largely addressed shift times, but also commented that Dr. Muzaffar expected respect and professionalism from the respiratory therapy supervisors and warned that any future complaints would be taken very seriously. After her e-mail, Dr. Muzaffar continued to get complaints from the night shift's respiratory therapists.

On February 14, 2011, Dr. Cohen received an e-mail from the Respondent's labor relations department regarding AFSCME's petition. Later, on February 18, 2011, Dr. Cohen sent the four respiratory therapy supervisors an e-mail asking for documentation demonstrating that they had disciplined respiratory therapists and to confirm that more than half of the respiratory therapy supervisors' duties were supervisory. Hardwicks-Williams and Shelton responded to Dr. Cohen's e-mail. (It is unclear whether Elackattu and Gary also responded.)

On March 2, 2011, Dr. Muzaffar sent Hardwicks-Williams and Shelton an e-mail. It noted that the night shift's respiratory therapists felt that their respiratory therapy supervisors were not willing to help with work and were picking on the respiratory therapists because of their prior complaints. It also asked Hardwicks-Williams and Shelton to assess their attitudes toward their subordinates, work on their tone, and try to repair their relationships. Shelton replied to Dr. Muzaffar's e-mail the same day. In her reply, Shelton disputed the respiratory therapists' charges. Later, during a March 9, 2011 meeting, Hardwicks-Williams and Shelton responded to Dr. Muzaffar's concerns and explained to Dr. Muzaffar that the two were getting "pushback"

from the night shift's respiratory therapists. According to Dr. Muzaffar, Hardwicks-Williams and Shelton were defensive and argumentative during the meeting.

Dr. Muzaffar discussed her concerns about Hardwicks-Williams' and Shelton's performance with Dr. Cohen on March 10, 2011. Drs. Cohen and Muzaffar concluded that there was no hope for remediation and determined that both Hardwicks-Williams and Shelton should be terminated. Subsequently, on March 11, 2011, Dr. Muzaffar handed Shelton a notice of termination. The notice was authored by Dr. Cohen and dated March 10, 2011. It informed Shelton that she had not completed her probationary period successfully. No additional explanation was provided at that time.

After Shelton was given her notice of termination, Drs. Cohen and Muzaffar were informed that the termination should have come from the hospital's human resources department. Accordingly, on March 17, 2011, Dr. Cohen sent a letter to Deborah Tate, the hospital's director of human resources. It requested that Shelton be terminated and alleged that Shelton had performed unsatisfactorily; had been extremely difficult to work with; had behaved toward her fellow supervisors, staff members, and medical leadership in a hostile and aggressive manner; had failed to listen to suggestions or criticism from coworkers; was not willing to work alongside her staff when circumstances required it; and could not be remediated. It also noted that Dr. Cohen and others had tried repeatedly to counsel Shelton about those weaknesses but were unsuccessful.

Shelton later received a second notice of termination by mail on March 21, 2011. That notice, which was authored by Tate, stated that Shelton had failed to meet expectations and did not satisfy her probation period. Hardwicks-Williams received a similar notice of termination

around the same time. The day shift's respiratory therapy supervisors (who, unlike Hardwicks-Williams and Shelton, were not probationary employees) were not terminated.

IV. DISCUSSION AND ANALYSIS

The Complaint for Hearing alleges that the Respondent violated Sections 10(a)(1) and (2) of the Act. Section 10(a)(1) provides, in relevant part, that an employer may not interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in the Act or dominate or interfere with the formation, existence, or administration of a labor organization. Ordinarily, whether an employer has violated Section 10(a)(1) does not depend on the employer's motive. Instead, an objective test is used. Chicago Transit Authority, 18 PERI ¶3021 (IL LRB-LP 2002); Chicago Park District, 7 PERI ¶3021 (IL LLRB 1991). However, an objective test cannot be utilized in this instance, where Shelton narrowly argues that she was terminated because "she brought in the union." Here, the analysis of the alleged Section 10(a)(1) violation must follow the criteria arising under Section 10(a)(2) of the Act. Chicago Park District, 9 PERI ¶3016 (IL LLRB 1993); Chicago Park District, 8 PERI ¶3017 (IL LLRB 1993); Chicago Park District, 7 PERI ¶3021; Chicago Housing Authority, 6 PERI ¶3013 (IL LLRB 1990).

Section 10(a)(2) provides, in part, that an employer may not "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 establish a prima facie violation of Section 10(a)(2), a charging party must prove by a preponderance of the evidence: (1) that an employee engaged in union or protected, concerted activity; (2) that the employer had knowledge of such activity; and (3) that the employee's protected conduct was a motivating factor in an adverse employment action. City of Burbank v. Illinois State Labor

Relations Board, 128 Ill. 2d 335, 345, 538 N.E.2d 1146, 1149 (1989); City of Chicago, 11 PERI ¶3008 (IL LLRB 1995). The failure to prove such a causal connection precludes a finding of a violation. Chicago Park District, 9 PERI ¶3016; Chicago Park District, 7 PERI ¶3021.

Regarding the first element of the Section 10(a)(2) analysis, I note that distributing and collecting union authorization cards in order to organize a bargaining unit is undoubtedly protected, concerned activity, and the record clearly demonstrates that Shelton did that. An individual's submission of such a card is similarly protected. Illinois State Toll Highway Authority, 25 PERI ¶4 (IL LRB-SP 2009); City of Highland Park, 18 PERI ¶2012 (IL LRB-SP 2002); City of Mattoon, 11 PERI ¶2016 (IL SLRB 1995); City of Pekin, 9 PERI ¶2037 (IL SLRB 1993); Forest Preserve District of Cook County, 5 PERI ¶3002 (IL LLRB 1988). Accordingly, the first element of a prima facie case has been firmly established. Further, Shelton's termination was obviously an adverse employment action. Chicago Transit Authority, 30 PERI ¶9 (IL LRB-LP 2013); Village of Oak Park, 28 PERI ¶111 (IL LRB-SP 2012). Regarding the second element, however, I find that the record does not demonstrate that the Respondent's key decision-makers – Drs. Cohen and Muzaffar – were aware of Shelton's protected, concerted activity when they terminated Shelton's employment and, accordingly, Shelton has not established a prima facie case.

Shelton's testimony indicates that she never informed her superiors of her organizing activity, and nothing in the record indicates that the union steward she worked with or another respiratory therapy supervisor mentioned it to anyone else, either. The testimony of Drs. Cohen and Muzaffar (which I find credible) reinforces that fact and consistently suggests that they were unaware of Shelton's union activity when she was terminated. Hardwicks-Williams also appears to have kept Shelton's efforts secret. Logically, the "small plant doctrine" is largely inapplicable

under such circumstances, and therefore one cannot assume that the other two respiratory therapy supervisors (who did not testify) shared their experiences or Shelton's role with their superiors.[1] See County of Perry and Sheriff of Perry County, 19 PERI ¶124 (IL LRB-SP 2003); Chicago Park District, 16 PERI ¶3008 (IL LLRB 1999); County of Peoria, 3 PERI ¶2028 (IL SLRB 1987); County of Cook, 29 PERI ¶152 (IL LRB-LP G.C. 2013); National Labor Relations Board v. Ace Comb Company, 342 F.2d 841, 848 (8th Cir. 1965); Indiana Metal Products Corp. v. National Labor Relations Board, 202 F.2d 613, 617 (7th Cir. 1953).

Additionally, I find that, while Drs. Cohen and Muzaffar were eventually aware that a union was interested in organizing their employees, it is unclear whether the two decision-makers ever meaningfully understood the basic mechanics of a majority interest representation/certification petition, including whether any of the respiratory therapy supervisors were responsible for its filing. Moreover, even if I presume that the two understood that a majority of the respiratory therapy supervisors had submitted cards (as Shelton suggests in her brief), it has not been shown how they would know of Shelton's unique role or whether Shelton was a part of that majority. AFSCME (not Shelton) filed the petition and, as Section 9(a-5) of the Act mandates, "[a]ll evidence submitted by an employee organization to the Board to ascertain an employee's choice of an employee organization is confidential and shall not be submitted to the employer for review."

In short, the Complaint for Hearing should be dismissed because Shelton has failed to establish that the Respondent had knowledge of her union activity when she was terminated. See Village of Oak Park, 28 PERI ¶111; City of Pekin, 9 PERI ¶2037; Chicago Transit Authority, 16 PERI ¶3004 (IL LLRB G.C. 1999); Ace Comb Company, 342 F.2d at 848. Nevertheless, to the

[1] Under the small plant doctrine, employer knowledge of union activities is inferred where union activities are conducted at a small plant and carried on openly or at such time that it may be presumed that the employer must have noticed them. City of Sycamore, 11 PERI ¶2002 (IL SLRB 1994).

extent the third element of the Section 10(a)(2) analysis might be considered, I note that a charging party may establish that element via direct evidence such as statements or threats. Alternatively, it may rely on circumstantial evidence such as the timing of the employer's action in relation to the protected activity; expressed hostility toward protected activities; disparate treatment of the alleged discriminatees in comparison to other employees; or shifting, pretextual, or inconsistent explanations for the adverse action. City of Burbank, 128 Ill. 2d at 345, 538 N.E.2d at 1149; County of Williamson and Sheriff of Williamson County, 14 PERI ¶2016 (IL SLRB 1998); Sheriff of Jackson County, 14 PERI ¶2009 (IL SLRB 1998); Village of Glenwood, 3 PERI ¶2056 (IL SLRB 1987). Here, Shelton attempts to establish a "retaliatory intent" by highlighting Dr. Cohen's "opposition to bringing in the union," the "tight timing and dramatic change in treatment," and the "favorable treatment" of the day shift's respiratory therapy supervisors. Those attempts fall short.

I would grant that Dr. Cohen opposed the organization of the respiratory therapy supervisors. Indeed, Dr. Cohen openly conceded that point during the hearing. Nevertheless, the fact that Dr. Cohen was so opposed does not in itself permit an inference that he was willing to use unlawful means against union activists. Under these circumstances, Dr. Cohen must have exhibited opposition not merely to the union but to protected activity by his employees, and that kind of opposition was not shown. I find that Dr. Cohen was not opposed to unions or organizing in general, but simply felt that the respiratory therapy supervisors' duties disqualified them from organizing and believed that they did not want to be in the petitioned-for bargaining unit. In addition, I note that, even if Dr. Cohen's opposition could be used to infer an improper motivation, it cannot be combined with demonstrable knowledge of Shelton's union activities as required. See City of Pekin, 9 PERI ¶2037 (IL SLRB 1993); County of Cook, 7 PERI ¶3017 (IL

LLRB 1991); County of DuPage and DuPage County Sheriff's Department, 6 PERI ¶2030 (IL SLRB 1990); Board of Trustees of Southern Illinois University at Carbondale, 22 PERI ¶62 (IL ELRB 2006); Raysel-IDE, Inc., 184 NLRB 879, 880 (1987). Dr. Cohen also largely appears to have relied on Dr. Muzaffar's recommendation, and Dr. Muzaffar has expressed no comparable opposition. See East St. Louis Housing Authority, 29 PERI ¶154 (IL LRB-SP G.C. 2013). Accordingly, I find no causal nexus.

As indicated, Shelton asserts that "[t]he tight timing between Shelton's union activity and her termination shows retaliation." To some degree, that rings true. All of Shelton's union activity occurred in late December of 2010 and early January of 2011, and Shelton received her first notice of termination on March 11, 2011, just two months later. Generally speaking, that kind of turnaround could be deemed suspicious timing. Yet, temporal proximity alone is insufficient to establish animus, and Shelton presents no other compelling argument. Village of Hazel Crest, 30 PERI ¶72 (IL LRB-SP 2013); Village of Oak Park, 30 PERI ¶51 (IL LRB-SP 2013); Village of McCook, 25 PERI ¶75 (IL LRB-SP 2009); County of Peoria, 3 PERI ¶2028; Lake Zurich School District No. 95, 1 PERI ¶1031 (IL ELRB 1984).

Again, a two-month turnaround is fairly notable. However, in this instance, I find it just as noteworthy that Dr. Muzaffar became Shelton's immediate supervisor a month before Shelton's termination. In my view, that transition neatly coincides with and plausibly accounts for the "dramatic change in treatment" Shelton highlights. See Village of Hazel Crest, 30 PERI ¶72. I note that, right after Marante's departure, Dr. Muzaffar sent the respiratory therapy supervisors an e-mail warning them that future complaints would be taken very seriously, and the complaints continued.

Shelton separately alleges disparate treatment, but she has introduced no compelling evidence of employees who were similarly situated yet treated more favorably. See Village of Oak Park, 28 PERI ¶111; City of Decatur, 14 PERI ¶2004 (IL SLRB 1997); County of Cook, 29 PERI ¶152. While it is true that Elackattu and Gary were also respiratory therapy supervisors but were not terminated, nothing indicates that they had similar issues with their subordinates. The two respiratory therapy supervisors who were generating complaints – Hardwicks-Williams and Shelton – were similarly terminated. Further, unlike Elackattu and Gary (who were long-term employees), Hardwicks-Williams and Shelton were probationary employees and approaching the ends of their 12-month probationary periods. Those divergent circumstances cannot be overlooked and could easily explain the "contrasting treatment" of the two groups. I also note that all four respiratory therapy supervisors engaged in protected, concerted activity, and Hardwicks-Williams' activity was essentially no different than that of Elackattu and Gary. See City of Sycamore, 11 PERI ¶2002 (IL SLRB 1994).

V. CONCLUSION OF LAW

I find that Shelton failed to prove by a preponderance of the evidence that the Respondent violated Sections 10(a)(1) and (2) of the Act.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the Complaint for Hearing be dismissed in its entirety.

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 10 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 5 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 General Counsel of the Illinois Labor Relations Board 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 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 in Chicago, Illinois on July 22, 2014.

STATE OF ILLINOIS
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LOCAL PANEL

Martin Kehoe
Administrative Law Judge