

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

Service Employees International Union)	
Local 73,)	
)	
Charging Party)	
)	Case No. L-CA-12-022
and)	
)	
County of Cook,)	
)	
Respondent)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On December 6, 2011, Service Employees International Union, Local 73 (Charging Party or SEIU) filed a charge with the Illinois Labor Relations Board’s Local Panel (Board) alleging that the County of Cook (Respondent or County) engaged in unfair labor practices within the meaning of Sections 10(a)(2) and (1) of the Illinois Public Labor Relations Act (Act) 5 ILCS 315 (2010), as amended. The charge was investigated in accordance with Section 11 of the Act and on April 18, 2012, the Board’s Executive Director issued a Complaint for Hearing. A hearing was conducted on October 25, 2012, in Chicago, Illinois, at which time SEIU 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) thereof.

4. SEIU is a labor organization within the meaning of Section 3(i) of the Act.
5. At all times material, the following individuals have occupied the position opposite their name and have been the County's agents authorized to act on its behalf:
 - i. Theresa Larkin – Deputy Chief, Bureau of Human Resources
 - ii. Kevin Givens – Deputy Director, Department of Environmental Control
 - iii. Lanesha Barker – Department of Environmental Control Supervisor
6. On or about October 5, 2011, SEIU filed a representation petition with the Board, in Case No. L-RC-12-007, along with the requisite showing of interest.
7. On or about October 7, 2011, the County terminated James Edwards's employment.

II. ISSUES AND CONTENTIONS

The issue is whether the County violated Sections 10(a)(2) and (1) of the Act when it terminated James Edwards's employment, allegedly because he spoke openly to coworkers encouraging them to seek membership in the Union, sought out guidance from the Union with regard to obtaining representation, solicited and obtained signed Union authorization cards from his fellow employees interested in union membership, and met with local staff representative Dale Jackson in the Department of Environmental Control office to discuss the Union's representation petition and other union issues.

The Union argues that the County violated the Act because it discharged Edwards in retaliation for his protected activity. First, the Union asserts that Edwards engaged in protected activity when he contacted the Union seeking representation, when he signed an authorization card and when he solicited signed authorization cards from two co-workers.

Second, the Union contends that the County knew of Edwards's protected activity, even though decision-maker Director Deborah Stone disavowed having such knowledge, because two other County agents knew of it. Further, the Union asserts that Stone must have known of Edwards's protected activity because the Union filed the petition seeking to add Edwards's position to the unit prior to the date on which the County discharged him. In the alternative, the Union argues that the Board should infer that Stone knew of Edwards's protected activity by applying the small plant doctrine.

Third, the Union contends that the County terminated Edwards's employment out of union animus, as demonstrated by both direct and circumstantial evidence. First, the Union

asserts that Deputy Director Kevin Givens¹ expressed union animus when he told Edwards that his joining the union was “not going to happen.”

Next, the Union asserts that the timing of Edwards discharge, three days after the Union filed its petition with the Board in October 2011, is suspicious and indicative of union animus. The fact that Stone contemplated Edwards’s dismissal months earlier makes the timing more suspicious, not less, according to the Union, because the County allegedly provided no evidence to explain the delay. In the alternative, the Union asserts that the timing of Stone’s decision to terminate Edwards’s employment, made prior to July 23, 2011, nevertheless presents evidence of suspicious timing because it coincided with the period in which Edwards stepped up his organizing efforts.

In addition, the Union contends that the County’s allegedly shifting reasons for terminating Edwards’s employment similarly demonstrate animus and pretext. In support, the Union argues that the mere fact that the County introduced evidence of Edwards’s disciplinary history and driving record at hearing should be construed as an attempt to shift explanations because the County never told Edwards that it terminated his employment for poor driving and disciplinary issues.

Finally, the Union asserts that the County’s stated reason for terminating Edwards’s employment are pretextual, that they accordingly provide additional evidence of animus, and that they also show that the County had no legitimate business reason for terminating his employment. The Union contends that the fact that the County failed to provide documentary evidence of its economic hardships or its need for a departmental reorganization shows that those reasons for terminating Edwards’s employment are pretextual. Similarly, the Union asserts that the process by which the County effected Edwards’s termination, finding him an at-will, Shakman-exempt employee and summarily discharging him, similarly demonstrates animus and pretext, regardless of whether Stone relied on information she believed to be accurate. Finally, the Union asserts that the County’s stated economic reasons for terminating Edwards’s employment are undermined by the fact that Edwards was the only one whose employment the County terminated to address these economic concerns.

The County argues that the Union has not met its prima facie case to show that it retaliated against Edwards because of his union activity. First the County asserts that Stone, the

¹ Givens was Director at the time he made this statement.

decision-maker, had no knowledge of Edwards's protected activity. Second, the County contends that the Union introduced no evidence of union animus. In support, the County asserts that the timing of Edwards's termination was not suspicious, even though the County terminated Edwards's employment just days after the Union filed its representation petition, because Stone had decided to terminate Edwards's employment months earlier. Next, the County states that its assertion that Edwards was at-will and Shakman-exempt does not demonstrate animus, even though Edwards's position is not listed on the most current Shakman-exempt list, because Stone relied in good faith on information obtained from Human Resources that Edwards's title appeared on a prior exempt list. Moreover, the County notes that Edwards's status as at-will or Shakman-exempt is irrelevant because it does not address the County's decision to terminate Edwards's employment and only addresses the process by which it effectuated that decision.

Finally, the County asserts that its need to meet the budget and its related need to reorganize constitute legitimate, non-discriminatory reasons for terminating Edwards's employment. In support, the County notes that Stone assessed the department upon her arrival as its new Director, noticed that Edwards was no longer performing field inspections as required by his job description, observed that other employees had absorbed those job duties, and ascertained that some of Edwards's subordinates were also reporting to another supervisor. Stone then chose to terminate Edwards's employment when confronted by a shrinking budget because some of the services he performed were duplicative of those performed by others and because his remaining duties did not warrant a full-time position. The County buttresses the legitimacy of its budgetary reasons for terminating Edwards's employment noting that it revoked an offer of employment, extended prior to the budget cut, and that it also cut non-personnel expenditures at the same time.

III. FINDINGS OF FACT

The Cook County Department of Environmental Control (Department) is a regulatory body responsible for measuring County air quality and for inspecting and regulating the demolition of buildings, open burning, and commercial and industrial businesses which might impact air quality. The Department is also charged with making Cook County operations as sustainable as possible.

The Department is comprised of four large units and employs a total of 33 individuals. The technical services unit monitors air quality and gathers data on ambient air. The inspectional unit, also known as the commercial unit, inspects all commercial facilities within suburban Cook County that have certain types of chemical at their facility and that have fuel burning equipment of over 1 million BTUs. The unit also issues permits for open burns. The industrial unit inspects industrial facilities with fuel-burning equipment over a certain size, various types of industrial processing equipment, or storage tanks, to ensure that they are installed properly and that they do not create emissions, noise, or dust. The unit also issues permits for these facilities. The asbestos/demolition unit inspects building demolition worksites to ensure that no asbestos is released into the air during demolition. That unit also issues permits to entities that wish to demolish a building or remove asbestos.

The Department hired James Edwards in October 2009 as an environmental control inspection supervisor in the asbestos/demolition department. He worked under the supervision of Commercial Unit Field Evaluation Manager Lanesha Barker, who temporarily oversaw the asbestos/demolition unit while the assigned manager of asbestos/demolition was still in training.

As inspection supervisor, Edwards was responsible for conducting fuel combustion inspections and for inspecting gas stations, dry cleaners, painting booths, and restaurants that had a gas or electric exhaust system. He supervised a staff of five inspectors in the asbestos/demolition and the commercial units, coordinated their work, assigned their schedules, and assisted them in the field when they had difficulties; the inspectors in the commercial unit also reported to Barker. In addition, Edwards was required to perform investigations in the field when staff found violations, to help prepare for environmental hearings, and to respond to reports of immediate environmental dangers or incidents on a 24 hour/7-day basis. As such, driving was an important part of the inspection supervisor position.

In November 2009, Edwards became interested in joining a union because he learned that his own supervisor was represented by one. Edwards discussed his interest with coworkers, including Barker and then-Director Kevin Givens, several times. These discussions occurred in public and the clerks and office staff were present during these discussions. Edwards never attempted to conceal his interest in joining a union. In early 2010, Edwards once again discussed with Givens his desire to join a union. Givens responded "it's not going to happen."

On March 15, 2010, Edwards received a ticket for red light violation but did not pay the fine for his ticket. On September 21, 2010, Givens instructed Edwards in a memo to submit a receipt demonstrating that he had paid the fine. Givens further stated that Edwards's failure to pay could result in disciplinary action and the revocation of Edwards's Cook County vehicle.

In Spring 2010, Edwards's friend sent two AFSCME representatives to the Department's offices during lunch in response to Edwards's interest in joining a union. Some clerks and Barker were in the office when the representatives arrived. The representatives informed Edwards that AFSCME could not represent him because SEIU already represented other employees in the Department. Edwards later contacted SEIU at the AFSCME representatives' suggestion. SEIU gave Edwards an application for membership which he completed and submitted at SEIU's main office.

On February 8, 2011, Edwards received another memo from Givens. The memo instructed him to pay an outstanding fine for a January 2011 red light violation, noted that the violation occurred ten miles away from the location where Edwards should have been conducting his inspections, and stated that a citizen had complained of Edwards's erratic driving. As a result, Givens revoked Edwards's use of his County-issued vehicle as of February 10, 2011, and instructed him to report to the Department's main office at his regularly scheduled hours, until further notice. As of that date, Edwards could no longer go perform inspections in the field because he did not have use of a County vehicle.

In April 2011, the Cook County Board president appointed Deborah Stone as the Department's director and the County's chief sustainability officer. Former Director Givens became the deputy director. Stone and Givens spoke several times a day and had formal meetings once a week. However, Givens discussed labor matters with Stone very infrequently.

When Stone first started as director, she began to formulate an opinion of the Department's efficiency in meeting its goals. She observed a tension between the need for field investigators and the need for high-level policy staff. She also noted that the Department contained too many levels of supervision. At hearing, Stone testified that the Department had been reduced in size from 70 employees to just over 30 while it maintained its historic five levels of management. Also, she noted that there was confusion with respect to employees' management responsibilities because both Edwards (asbestos/demolition) unit, and Barker (commercial unit), purportedly managed commercial unit investigators.

Stone also observed that Edwards was not going into the field and inquired why. Givens told Stone that he revoked Edwards's use of a County vehicle and explained the circumstances. Stone consulted Edwards's personnel file and familiarized herself with Edwards's employment history. She noted that Edwards no longer performed some of the functions required for his position as defined by his job description because he could not use a County vehicle.

On May 9, 2011, Edwards received a written documentation of a verbal reprimand in part for failing to pay the fines he received for Cook County vehicle violations as Givens had instructed him in February and March 2011.

In mid-summer 2011, during lunch, Edwards's coworker introduced him to SEIU Vice President Betty Boles.² Edwards told Boles that he had submitted an application for membership but that he had not received a response from SEIU. Boles stated that she would send an SEIU representative to the Department.

In July 2011, Stone received notice that the County was cutting its budget. Stone became concerned that she would not meet the budget unless she cut personnel because salaries comprised all but \$100,000 of the Department's \$1.5 million budget. As a result, Stone assessed the Department's main functions, (regulation, raising revenue, policy-making), analyzed the organization of the Department and assessed the various positions to determine which position to cut. In addition, Stone spoke to Givens, Chief Administrative Officer Robin Kelly, and Terri Larkin from Human Resources, about eliminating a position in the Department. Stone discussed Edwards's position, in particular, with Givens and Barker. Givens and Stone addressed the functions of the inspection supervisor position, whether it was needed, and how it compared to other positions that the Department could eliminate. Stone's conversations with Givens resulted, supported, and led to Stone's decision to terminate Edwards's employment, but they were not the only basis for it. Rather, Stone also based her decision on her own experience with reorganizations, her observation that Edwards's duties were absorbed elsewhere in the Department while he was not going to the field, and her assessment that Edwards performed duties that were duplicative of other managers' duties. Further, Stone determined that Edwards's non-field functions, such as helping managers with weekly schedules and being the

² The exact date of this conversation does not appear in the record. However, the conversation likely occurred in mid- to late-summer because Edwards testified that he spoke to co-worker Malfitano about the union in mid- to late-summer and that his conversation with Malfitano took place "right after the time frame" when he spoke to Boles.

back-up person to look at violations, did not warrant a full-time position. Stone testified that she did not terminate Edwards's employment because he could not use a County vehicle but rather because Stone noticed that other employees were able to compensate for his non-performance by fulfilling his duties while he was unable to drive.

At the same time, Stone rescinded an offer of employment to an individual for a commercial investigation position due to lack of funds and also cut some non-personnel expenditures. Edwards was the only employee whose employment would be terminated as a result of the budget cuts.

Sometime prior to July 23, 2011, Stone contacted Larkin by phone to determine the process for terminating the environmental control inspection supervisor's position. Stone inquired whether that position was at-will and Shakman-exempt. An employee who is Shakman-exempt can be hired with political consideration, is an at-will employee, and serves at the pleasure of the administration. Stone also asked Larkin whether it was possible to cut that position before the budget was printed because Stone did not want an employee in the Department's offices who knew that his position was not budgeted.

Larkin researched the position of environmental control inspection supervisor and learned it was a G2 position. Employees in G2 positions were not on the most recent (2010) Shakman-exempt list. Rather, Larkin testified that they were on a previous one. As such, those employees are considered at-will. Larkin told Stone what she had learned. Larkin testified that the information she conveyed to Stone concerning Edwards's position was accurate to the best of Larkin's knowledge at the time. Stone relied on the information she received from Larkin to dictate the procedure she used to terminate Edwards's employment.

In mid-summer 2011,³ during lunch, Edwards's coworker introduced him to SEIU Vice President Betty Boles.⁴ Edwards told Boles that he had submitted an application for membership but that he had not received a response from SEIU. Boles stated that she would send an SEIU representative to the Department.

³ Summer began on June 21 and ended on September 21 in 2011. Thus, this mid-summer meeting likely occurred approximately halfway between June 21 and September 21, in late July.

⁴ The exact date of this conversation does not appear in the record. However, the conversation likely occurred in mid- to late-summer because Edwards testified that he spoke to co-worker Malfitano about the union in mid- to late-summer and that his conversation with Malfitano took place "right after the time frame" when he spoke to Boles.

In mid-summer 2011, Edwards met Dale Jackson, the assistant director of SEIU's Cook County Division and union representative for a unit of Department employees. Jackson visits the Department's office two or three times a month. He announces himself to the receptionist as the SEIU union representative. However, employees already know who he is, are usually aware that he has arrived, and may ask him questions about their contract.⁵ Barker and two other employees were present when Jackson visited the Department on that date.

Jackson brought authorization cards for Edwards to sign and discussed the details of the organization and certification process in Edwards's office. Edwards's office is located next to Stone's office and across from Barker's office. Edwards and Barker can see each other through their doors. Edwards told Jackson other employees were also interested in joining the union and that he would help sign them up.

On July 23, 2011, Stone wrote an email to Larkin confirming their earlier telephone conversation in which Larkin stated that the inspector supervisor position was a G2 position and that G2 employees may be fired at-will.

On July 25, 2011, Larkin emailed Stone telling her to obtain permission for the termination from the President's office and to contact Larkin when Stone wanted to schedule the termination meeting.

In mid- to late-summer 2011, Edwards asked coworker engineer Henry Malfitano, when the two were alone in Malfitano's office, whether Malfitano wanted to join the union. Malfitano stated that he wanted some time to think about it but came to Edwards's office a week later and handed Edwards a signed authorization card; Malfitano and Edwards were alone in Edward's office at the time. Edwards also gave an authorization card to coworker Leslie Young at the Department's main office. Young likewise signed and returned the card to Edwards.

On September 15, 2011, Stone emailed Larkin to schedule a meeting to terminate Edwards's employment. Stone stated that she understood the budget might be released by October 11, 2011. Since Edwards's position was not budgeted for the following year, she wanted to plan the termination meeting prior to the release of the budget so as not to cause disruption in the work place and adversely affect the work environment. As a result, Stone asked to schedule the termination meeting for the first week in October.

⁵ Jackson never had any discussions or meetings with Stone in 2011. However, employees had pointed her out to Jackson noting that she was their new director.

On September 19, 2011, Larkin emailed Stone informing her that the Department had received approval for the termination. Stone scheduled Edwards's termination meeting for October 7, 2011, because that was a date prior to the release of the budget when Larkin was also available. Stone could not schedule the meeting earlier than September 19, 2011, because she did not obtain clearance for the termination until then.

In August or early fall 2011, Jackson came to the Department during lunch to pick up the signed authorization cards Edwards had collected. Jackson and Edwards also had a brief conversation. At the time, Lanesha Barker was in her office and two employees were at the Department's front desk. Jackson later gave the cards to Vice President Betty Boles.

On or about October 5, 2011, the Union filed a majority interest petition with the Board in Case No. L-RC-12-007, along with the requisite showing of interest. The Board time stamped the Union's petition as received on October 6, 2011.

Shortly thereafter, Jackson again came to the office around lunchtime and told Edwards that the Union had filed the petition. At the time, a couple of employees were in the office and Barker was at her desk.

On October 7, 2011, Kevin Givens summoned Edwards into Stone's office.⁶ Stone informed Edwards he was terminated. She explained that Edwards was Shakman-exempt and that his employment was at-will. Stone gave Edwards a termination letter which was drafted by Larkin. It stated that "pursuant to County Ordinance and the Shakman v. Cook County Agree Court Order...your position is at-will and not subject to career service."⁷ It further stated that "the Office of Environmental Control has been evaluating its operations and considering its needs and it has been determined that your service is no longer required."⁸ Stone never told Edwards that he was terminated because he could no longer drive a County vehicle and she made no reference to his disciplinary history at the termination meeting. Stone never testified that she discharged Edwards because of his disciplinary history or because he could no longer drive a County vehicle.

⁶ Givens, Larkin and Stone were present at this meeting.

⁷ Department management never before told Edwards that he was an at-will employee. Edwards's job description does not state that his position is Shakman-exempt or that his position is at-will.

⁸ Stone testified that she did not know to which ordinance the letter referred.

Stone testified that Edwards's union activity was not a factor in her decision to cut the inspector supervisor position. Further, she testified that she did not know about Edwards's union activity until after she terminated his employment. Specifically, Stone testified that she did not know that Edwards was encouraging coworkers to seek union membership in SEIU, that he sought out guidance from SEIU with regard to obtaining representation, that he solicited and obtained signed authorization cards from fellow employees, that he presented the signed authorization cards to the Union, or that he discussed the petition and other Union issues with Jackson on or around October 5, 2011. Similarly, Stone testified that she was not aware that the Union filed a representation petition with the Board until she received documentation from the Board to that effect. Edwards testified that he never spoke to Stone about his interest in joining a union. He further stated that "she didn't speak to anybody."

The Department has not filled Edwards's position and does not plan to do so because it is not budgeted.

IV. DISCUSSION AND ANALYSIS

The County did not violate Section 10(a)(2) and (1) of the Act when it terminated Edwards's employment because the Union has not met its prima facie case to show that the County acted out of union animus.

To establish a prima facie case that the Employer violated section 10(a)(2) of the Act, the Union must prove that: 1) the employees engaged in union activity, 2) the Employer was aware of that activity, and 3) the Employer took adverse action against the employees for engaging in that activity in order to encourage or discourage union membership or support. City of Burbank v. ISLRB, 128 Ill. 2d 335, 345, 538 N.E.2d 1146, 1149 (1989). With respect to the last element, the Union must introduce evidence that the adverse action was based, in whole or in part, on union animus, or that union activity was a substantial or motivating factor. City of Burbank, 128 Ill. 2d 335, 538 N.E.2d 1146. Union animus is demonstrated through the following factors: expressions of hostility toward unionization, together with knowledge of the employee's union activities; timing; disparate treatment or a pattern of conduct which targets union supporters for adverse employment action; inconsistencies between the reason offered by the employer for the adverse action and other actions of the employer; and shifting explanations for the adverse action. Id.

Once, the union establishes a prima facie case, the employer can avoid a finding that it violated section 10(a)(2) by demonstrating that it would have taken the adverse action for a legitimate business reason notwithstanding the employer's union animus. Id. Merely proffering a legitimate business reason for the adverse employment action does not end the inquiry, as it must be determined whether the proffered reason is bona fide or pretextual. If the proffered reasons are merely litigation figments or were not in fact relied upon, then the employer's reasons are pretextual and the inquiry ends. However, when legitimate reasons for the adverse employment action are advanced, and are found to be relied upon at least in part, then the case may be characterized as a "dual motive" case, and the employer must establish, by a preponderance of the evidence, that the action would have been taken notwithstanding the employee's union activity. Id.

Here, Edwards engaged in protected activity in 2009 and 2010 when he spoke with Barker and Givens about his interest in joining the Union; in Spring 2010 when he contacted the Union to obtain an application for membership; in mid-summer 2011 when he discussed his application for membership with Union Vice President Boles and discussed the details of the organization and certification process with Union representative Jackson; in mid- to late-summer 2011 when he asked coworker engineer Malfitano to join the union and furnished Malfitano and coworker Young with Union authorization cards; and in August or early fall when he returned his colleagues' signed authorization cards to Union representative Jackson. See Cnty. of Cook, 7 PERI ¶ 3017 (IL LLRB 1991)(solicitation of authorization cards and voicing interest in joining union to supervisors constitutes protected activity); Chicago Bd. of Educ., 6 PERI ¶ 1107 (IELRB 1990)(seeking application for union membership constitutes protected activity).

Further, the Board may infer that Stone had knowledge of Edwards's protected activity under the small plant doctrine because the Department is small and Edwards engaged in union activity openly during business hours. A respondent's knowledge of a charging party's union activity may be inferred under the Board's small plant doctrine when the respondent's department qualifies as small work site and when the employee engages in union activity in a manner, and at such times, that an employer may be presumed to have noticed them. City of Sycamore, 11 PERI ¶ 2002 (IL SLRB 1994); Champaign Cnty. Clerk of the Circuit Court, 8 PERI ¶ 2025 (IL SLRB 1992); Vill. of Glenwood, 3 PERI ¶ 2056 (IL SLRB 1987), Cnty. of Peoria, 3 PERI ¶ 2028 (IL SLRB 1987). Notably, the small size of the facility alone does not

establish a presumption that the employer was aware of the employees' protected activity but rather permits an inference of such knowledge if the charging party establishes by other evidence, direct or circumstantial, that the employer had reason to note the union activities in the facility. Perry and Sheriff of Perry Cnty., 19 PERI ¶ 124 (IL LRB-SP 2003).

Here, the Department qualifies as a small work site under the small plant doctrine because it has only 33 employees in total. See Rockford Township Highway Dept v. Illinois State Labor Rel. Bd., 153 Ill. App. 3d 863 (2nd Dist. 1987) (applying small plant doctrine to department or office where the bargaining unit is located and not to the entire county or city government); Vill. of Villa Park, 25 PERI ¶ 185 (IL LRB-SP 2009) (24-member bargaining unit qualified as small plant); Illinois State Toll Highway Auth., 25 PERI ¶ 4 (IL LRB-SP 2009) (small plant doctrine applied, even though there were 65 employees in the department and 265 white collar employees in the unit as a whole, where the three employees at issue worked in a seven-person, one-room office); Vill. of Frankfort, 15 PERI ¶ 2012 (IL LRB-SP 1999) (20-employee utility and public works departments qualified as small plant); City of Sycamore, 11 PERI ¶ 2002, (IL SLRB 1994) (employer's police department with only 30 employees was small enough for application of the small plant doctrine); Champaign Cnty. Clerk of the Circuit Court, 8 PERI ¶ 2025 (IL SLRB 1992) (small plant doctrine applied where employer had 25 employees in two locations); City of Chicago, 6 PERI ¶ 3020 (IL LRB 1990)(work site with 30 employees constituted a small plant within the meaning of the doctrine); Town of Decatur, 4 PERI ¶ 2003 (IL SLRB 1987)(work site with 40 employees constituted a small plant within the meaning of the doctrine when employees all worked in the same building); Vill. of Glenwood, 3 PERI ¶ 2056 (IL SLRB 1987)(small village with a total work force of 52 people constituted small plant where four small Village buildings were close geographically, the employees from the various departments had frequent contact with employees from other departments, and all employees use the same parking lot); but see City of Pekin, 9 PERI ¶ 2037 (IL SLRB 1993)(bargaining unit that included roughly 115 employees in more than four geographic locations did not constitute small plant); Cnty. of Peoria, 3 PERI ¶ 2028 (IL SLRB 1987) (nursing home with 167 employees was too large a facility to constitute a small workplace within the meaning of the doctrine).

In addition, Edwards engaged in protected activity in an open and visible manner such that Stone, the decision-maker, must have been aware of it. First, Edwards repeatedly told supervisor Givens of his desire to join a union and Director Stone's frequent, regular contact

with Givens in his capacity as Deputy Director strongly suggests that Givens would have told Stone of Edward's statements, even though Stone was not yet employed by the Department in 2009 and 2010 when Edwards made them. See Rockford Township Highway Dep't v. Ill. State Labor Rel. Bd., 153 Ill. App. 3d 863, 882 (2nd Dist. 1987) (knowledge inferred even though decision-makers were not employed by respondent when charging party solicited authorization card signatures because the decision-makers "may have been able to obtain information from other employees who had witnessed" the employees sign the cards); City of Sycamore, 11 PERI ¶ 2002 (IL SLRB 1994)(decision-maker's knowledge inferred where lieutenant who knew of charging party's activity reported daily to the decision-maker chief and was responsible for keeping the chief informed of the activities in the department); Vill. of Glenwood, 3 PERI ¶ 2056 (IL SLRB 1987)(decision-maker's frequent contact with individual who had knowledge combined with small workforce of 52 individuals warranted application of small plant doctrine); but see Chicago Park Dist., 16 PERI ¶ 3008 (IL LLRB 1999) (mere fact that supervisor was aware of charging party's protected activity did not establish that other respondent's agents who were not his direct supervisors must have been aware of them, absent additional evidence).

Second, Edwards openly engaged in union activity even after Stone's arrival when he gathered information concerning unionization from Union representative Jackson and solicited signed authorization cards from his fellow employees, at work, during work hours, in mid- to late-summer 2011. Notably, the fact that Edwards conducted some of this activity in his office does not demonstrate that Stone would not have been aware of it because Edwards's office was right next to Stone's own. See City of Chicago, 6 PERI ¶ 3020 (IL LLRB 1990) (superintendent's knowledge inferred where charging party solicited signatures near superintendent decision-maker's office and circulated a petition during work hours); Cnty. of Cook and Cook Cnty. Sheriff, 14 PERI ¶ 3005 (IL LLRB ALJ 1997) (Respondent's knowledge inferred in part because charging party expressed his opinion in close proximity to respondent's agent's office). Finally, the fact that Edwards never hid his union activity supports the finding Stone had reason to know of it, given the small size of the work force. City of Sycamore, 11 PERI ¶ 2002 (IL SLRB 1994)(the fact that employees made no attempt to hide their activities contributed to application of small plant doctrine).

However, the Union has not shown that Stone discharged Edwards for engaging in Union activity because the Union has introduced no direct or circumstantial evidence of animus.

First, there is no direct evidence that Stone or any other County agent harbored union animus. Contrary to the Union's contention, Givens's statement to Edwards that he would not successfully join the union ("it's not going to happen") is protected speech, not evidence of animus, and could not be used to impute unlawful motive to the County, even if it were, because Givens neither decided to terminate Edwards's employment nor effectively recommended such action to Stone.

A charging party may demonstrate a causal connection between an employer's adverse action and an employee's protected activity if an employer's agent with the authority and responsibility to effectively recommend or carry out the adverse action made anti-union statements. However, "the expressing of any views, argument, or opinion... shall not constitute or be evidence of an unfair labor practice...if such expression contains no threat of reprisal or force or promise of benefit." Macon Cnty. Highway Dep't, 4 PERI ¶ 2018 (IL SLRB 1988)(anti-union statements by individuals who would effectively recommend or carry out adverse action establishes causal connection); Cnty. of Menard, 3 PERI ¶ 2043 (IL SLRB 1987); 5 ILCS 315/10(c) (2010)(quoted text). Here, Givens's statement to Edwards, conveying that Edwards would not successfully join the union, does not qualify as evidence of animus and is instead protected speech under Section 10(c) of the Act because it constitutes the expression of an opinion or a prediction without the threat of reprisal or promise of benefit. See 5 ILCS 315/10(c) (2010).

Moreover, Given's statement cannot be used to find the County liable here, even if the Board determines it does show animus, because Givens did not decide to terminate Edwards's employment or effectively recommend Edwards's termination. Instead, Givens merely discussed with Stone the functions of the inspection supervisor position, whether it was needed, and how it compared to other positions that the Department could eliminate. Although Stone's conversations with Givens supported and led to Stone's decision to terminate Edwards's employment, the evidence demonstrates that Givens merely conveyed information to Stone concerning the position and permitted Stone to make her own, independent choice, which was based not only on her conversations with Givens but also on her conversations with Barker, her own experience with reorganizations, her observation that Edwards's duties were absorbed elsewhere in the Department while he was not going to the field, and her assessment that Edwards performed duties that were duplicative of other managers' duties. Thus, even if the

Board determined that Givens harbored union animus, that animus should not be imputed to the County because there is no evidence that Givens effectively recommended Edwards's termination.

Second, the Union has not demonstrated that the County treated Edwards disparately from other employees because it has introduced no evidence of employees who were similarly situated yet treated more favorably. Am. Fed. of State, Cnty. and Mun. Empl., Council 31, 175 Ill. App. 3d 191, 198 (1st Dist. 1988); City of Decatur, 14 PERI ¶ 2004 (IL SLRB 1997) (charging party bears the burden of demonstrating employees who engaged in protected activity received disparate treatment). Indeed, there are no employees on this record comparable to Edwards because Edwards was the only employee with the job title inspection supervisor employed at the Department and the only employee whose important job functions had been absorbed by coworkers.

Contrary to the Union's contention, the cursory method by which Stone terminated Edwards's employment does not demonstrate animus in the absence of disparate treatment, even though Stone may have determined erroneously that Edwards's position was at-will and Shakman-exempt, because Stone relied in good faith on Larkin's assessment of Edwards's at-will status which Larkin testified was correct to the best of her knowledge at the time. See City of Lake Forest, 29 PERI ¶ 52 (IL LRB-SP 2012) (applying the similar rationale to pretext analysis; finding that employer's decision is not pretextual merely because it is ill-informed or ill-considered); Macon Cnty. Highway Dept., 4 PERI ¶ 2018 (IL SLRB 1988); but see City of Harvey, 9 PERI ¶ 2041 (IL SLRB 1993) (no legitimate reason for layoff found, even though decision-maker relied in good faith on information provided by his source, when the source had reason to know that the information conveyed was erroneous and where decision-maker and source stood in an agency relationship).

Further contrary to the Union's contention, the charging party may not show that the employer "targeted" Union supporters merely by showing that a single vocal advocate for unionization suffered a single adverse employment action because such an isolated incident does not qualify as a "pattern of conduct" which demonstrates union animus. See City of Burbank, 538 N.E.2d at 1150 (pattern of conduct required); See Vill. of Glenwood, 13 PERI ¶ 2023 (IL SLRB ALJ 1997)(finding no targeting of union supporter even though employer disciplined only the most active union organizer employee, where employee's conduct warranted the discipline,

in the absence of other evidence demonstrating a pattern of conduct indicative of targeting); but see Cnty. of Williamson, 14 PERI 2011 (IL SLRB 1996)(targeting of union supporters found where employer discharged *two* employees who were also the most active union supporters less than three weeks after the union's organizing drive); City of Burbank v. Illinois State Labor Rel. Bd., 168 Ill. App. 3d 885, 895 (1st Dist. 1988), aff'd 128 Ill.2d 335 (1989) (pattern of conduct demonstrated where employer's attitude towards single employee changed following union activity, where employer's good working relationships with that employee were concluded, where employee was stripped of his authority over daily job assignments and work crews, and was then discharged). Any alternate conclusion would require the Board to find that an employer has targeted an employee for his union activity, even in the absence of disparate treatment or a history of mistreatment, whenever such a vocal union supporter is the only one subject to an adverse employment action.

Third, the County offered unshifting reasons for discharging Edwards that are unrelated to Edwards's protected activity because Stone maintained that she terminated Edwards's employment to meet the budget and to make the department more efficient. At hearing, Stone testified that she chose to eliminate Edwards's position because she noticed that Edwards's duties were absorbed elsewhere in the Department while he was not going to the field, that Edwards performed duties that were duplicative of other managers' duties, and that, as a result, Edwards's non-field functions did not warrant a full-time position. These reasons comport with those presented in Edwards's termination letter which stated that the Department "evaluat[ed] its operations[,],... consider[ed] its needs and...determined that [Edwards's] service[s] [were] no longer required."

Fourth, the County's decision to terminate Edwards's employment was consistent with its concurrent actions and is therefore not suspect, even in the absence of documentary evidence of the County's budgetary difficulties, because the County's decision was not an isolated measure to address monetary shortfalls and was instead one piece of the County's reasonable, multi-pronged approach to alleviate its economic distress. First, Edwards's termination was not the County's sole attempt to meet the budget. Rather, Stone also rescinded an offer of employment to an individual for a commercial investigator position (one not subject to Edwards's organizing efforts) and also cut non-personnel expenditures. Vill. of Schaumburg (Police Dep't), 29 PERI ¶ 75 (IL LRB-SP 2012) (reorganization which affected union employees was deemed consistent

with employer's other conduct and legitimate when it involved both union and non-union positions). Second, the County did not fill either Edwards's position or the commercial investigator position because it lacked the funds to do so. But see Cnty. of Williamson, 14 PERI ¶ 2011 (IL SLRB 1996) (reorganization that affected employees who had engaged in protected activity was deemed inconsistent with employer's other conduct and not legitimate where there was no evidence that the County eliminated vacant positions or that the positions remained vacant because of cost-cutting measures). Third, the County's decision to terminate Edwards's employment constituted a reasonable means to address budgetary concerns in light of both the County's expenditures and Edwards's job functions. From a budgetary standpoint, the County's decision to terminate Edwards's position without replacing him was reasonable because it effected a cost-savings by cutting salaries which make up the vast majority of the County's expenditures. But see, Vill. of Lyons, 5 PERI ¶ 2007 (IL SLRB 1989) (manager's reasonable belief that Village would save costs by replacing employees with independent contractors was not sufficient evidence that that reorganization was legitimate in the absence of hard financial data demonstrating a cost savings). Further, from a personnel standpoint, the County's decision to discharge Edwards was consistent with its desire to increase efficiency because some of Edwards's assigned duties were duplicative of those performed by others. In fact, Edwards oversaw some individuals who also reported to another supervisor and the Department was able to fulfill its inspection duties without Edwards's help. But see Cnty. of Williamson, 14 PERI ¶ 2011 (IL SLRB 1996) (no legitimate reorganization where employer presented no evidence that terminated employees had performed duties duplicative of those performed by others). Notably, the County's reasons for terminating Edwards's employment are consistent with its efficiency goals, even though Edwards's duties were not completely redundant, because driving was an important part of his job functions and Edwards's remaining duties did not warrant a full-time position.⁹

⁹ Notably, the cases cited by the Union in which the Board required additional evidence from the Respondent to demonstrate that its reorganization and/or economic hardship explanations were legitimate are distinguishable because in those cases the Charging Party had already undermined the legitimacy of the Respondent's explanations by meeting its prima facie burden and demonstrating animus under the Burbank burden-shifting framework which, as discussed below, the Union has not done here. See City of Harvey, 9 PERI ¶ 2041 (IL SLRB 1993) (Reorganization not legitimate where Respondent had no hard financial data to support cost savings of replacing unit members with private contractors, where decision-maker related the "ongoing problem with employee non-responsiveness and recalcitrance" to their filing of grievances, and where decision-maker was deemed to know that the employees did not actually refuse

Contrary to the Union's contention, the fact that the County introduced evidence at hearing of Edwards's disciplinary history does not demonstrate that the County presented shifting reasons for terminating Edwards's employment because the County never asserted that Edwards's disciplinary history was the reason for his termination. Indeed, Stone never testified that she terminated Edwards's employment because he had received discipline. Similarly, the County's counsel on brief never argued that Edwards's disciplinary history warranted his termination. Rather, the County introduced evidence of Edwards's disciplinary history to demonstrate why the County had revoked (and refused to restore) Edwards's driving privileges and, accordingly, to illustrate how Stone had occasion to realize that Edwards's driving-related duties could be fulfilled by others during a time when Edwards was not performing them.

Finally, the Union has not demonstrated that the County acted with animus when it discharged Edwards close to the time that he engaged in protected activity because the chain of events undermines a finding of suspicious timing and because such timing alone could not establish animus even if it were suspicious.

Here, Edwards's discharge, which occurred two days after the Union filed its petition with the Board, is not suspiciously-timed because Stone decided to terminate Edwards's employment months earlier at a time when it is unclear whether Edwards had yet stepped up his organizing efforts, and because Edwards's earlier protected conduct did not occur close enough to either the termination or Stone's decision to terminate Edwards's employment to demonstrate a causal connection between the two.

First, the temporal proximity between the date on which the Union filed its petition and the date on which the County terminated Edwards's employment is not suspicious because Stone decided to terminate Edwards's employment far earlier, sometime prior to July 23, 2011.

overtime, as alleged); Vill. of Lyons, 5 PERI ¶ 2007 (IL SLRB 1989) (reorganization was a sham where supervisor of the employees at issue virtually admitted that the layoff was effected due to his unrelenting hostility to dealing with the Charging Party as the collective bargaining agent of his employees and where the employer presented no evidence that it had used the money it saved from reorganization for its alleged intended purpose, paying for needed street repairs); City of Burbank, 2 PERI ¶ 2034 (IL SLRB 1986) aff'd 128 Ill.2d 335 (1989) (reorganization was pretextual where employer eliminated bargained-for position by terminating the employment of one union-supporter in that title and providing the union non-supporter a new title with a job description that matched the Act's supervisory exclusion and then filed a unit clarification petition seeking to exclude that title as supervisory).

Moreover, Stone's initial decision to terminate Edwards's employment cannot be deemed suspiciously timed, even though it occurred close to when Edwards openly engaged in Union activity, because there is insufficient evidence to determine that Stone decided to terminate Edwards's employment after he "stepped up" those unionizing efforts. Here, Edwards first met openly with Union representative Jackson in mid-summer (approximately late July), yet Stone had already decided to terminate Edwards's employment sometime prior to July 23, 2011. Thus, given the absence of specific dates in the record, it is equally likely that Stone decided to terminate Edwards' employment before he had stepped up his organizing efforts as after.

Second, the timing of Edwards's remaining protected activity with respect to the adverse employment action cannot demonstrate that the County acted out of union animus because that conduct either occurred too far from the adverse action or occurred after Stone decided to terminate Edwards's employment.¹⁰ To illustrate, Edwards's 2009 and 2010 statements to his supervisors concerning his interest in joining the Union and his 2010 meeting with AFSCME representatives occurred over seven months prior to Stone's decision and Edwards's termination and are thus too far removed to warrant an inference of suspicious timing. See City of Highland Park, 18 PERI ¶ 2012 (IL LRB-SP 2002) (four month gap between protected activity and adverse action not sufficiently close to demonstrate suspicious timing); Worth Park Dist., 25 PERI ¶ 59 (IL LRB-SP ALJ 2009) (timing of the suspension, about four months after the Charging Party began his union activity, was not persuasive evidence that the Respondent's suspension decision was unlawfully motivated). Further, it is undisputed that Edwards solicited cards from employees in late-summer, only after Stone had already decided to terminate his employment.

Contrary to the Union's contention, the lag between Stone's decision to terminate Edwards's employment (made prior to July 23, 2011) and the County's implementation of that decision (October 7, 2011) does not render the timing of Edwards's discharge suspicious because the lag is merely evidence of administrative sluggishness. Although Stone set the wheels of Edwards's discharge in motion on July 23, 2011, she only received approval for the action from the President's office on September 19, 2011, and sought to schedule the termination meeting swiftly within two weeks of that date, for the first week of October. See Macon Cnty. Highway Dep't, 4 PERI ¶ 2018 (IL SLRB 1988) (timing of a vote to eliminate jobs which was

¹⁰ Although Edwards asked the Union for a membership application sometime in spring, there is no evidence that Stone or any of Edwards's coworkers would have known of this protected activity at that time because Edwards did not conduct that activity during work hours at the Department's offices.

suspiciously close to the date on which affected employee at issue signed an authorization card was not sufficient to satisfy the charging party's prima facie burden; result was even more compelling given evidence that discussions concerning eliminating that position predated the charging party's interest in obtaining representation). Thus, this lag does not demonstrate animus.

However, even if the Board determined that there is sufficient evidence in the record to demonstrate that Edwards's termination was suspiciously timed, such timing alone does not show that the County acted unlawfully. See Pace Suburban Bus Division v. Ill. State Lab. Rel. Bd., State Panel, 406 Ill. App. 3d 484, 498 (1st Dist. 2010)(timing alone is not enough to prove unlawful motivation).

Thus, the County did not violate Sections 10(a)(2) and (1) of the Act when it terminated Edwards's employment as environmental control inspection supervisor.

V. CONCLUSIONS OF LAW

The County did not violate Sections 10(a)(2) and (1) of the Act when it terminated James Edwards's employment.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the instant complaint be dismissed.

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 General Counsel of the Illinois Labor Relations Board, 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 31st day of December, 2012

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

/s/ Anna Hamburg-Gal

**Anna Hamburg-Gal
Administrative Law Judge**