

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

Policemen's Benevolent Labor Committee,	)	
	)	
Charging Party	)	
	)	
and	)	Case No. S-CA-09-192
	)	
City of Clinton,	)	
	)	
Respondent	)	

**ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER**

On March 5, 2009, the Policeman's Benevolent Labor Committee (Charging Party) filed a charge in Case No. S-CA-09-192 with the State Panel of the Illinois Labor Relations Board (Board) alleging that the City of Clinton (Respondent) engaged in unfair labor practices within the meaning of Sections 10(a)(1) and (2) 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 January 13, 2013. On May 16, 2014, the Respondent filed a motion for summary judgment.

The case was heard on July 22, 2014 by Administrative Law Judge Michelle Owen, who had previously denied the Respondent's motion for summary judgment on June 13, 2014. Both parties appeared at the hearing and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally. The case was subsequently reassigned to the undersigned when Administrative Law Judge Owen left the employment of the Board. Later, written briefs were timely filed on behalf of both parties. The Respondent also filed a motion for sanctions. (The Charging Party did not reply to the motion for sanctions.) 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<sup>1</sup>**

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 State Panel pursuant to Section 5 of the Act.
3. At times material, the Charging Party has been a labor organization within the meaning of Section 3(i) of the Act.
4. At all times material, the Charging Party has been the exclusive representative of a bargaining unit composed of the Respondent's peace officers, including those in the rank of Police Officer (Unit).
5. At all times material, the Charging Party and the Respondent have been parties to a collective bargaining agreement (Agreement) setting out the terms and conditions of employment for Unit employees, expiring on April 30, 2011.
6. At all times material, the Respondent employed Bill Hurst as a Police Officer.
7. At all times material, Hurst was a public employee within the meaning of Section 3(n) of the Act.
8. At all times material, Hurst was active and visible in his support for the Charging Party, including but not limited to serving as the local union president.
9. At all times material, Police Chief Michael Reidy was an agent of the Respondent authorized to act on his behalf.

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<sup>1</sup> These preliminary findings emanate from the parties' stipulations.

10. On or about January 31, 2009, Reidy filed charges with the Respondent's Board of Fire and Police Commission (Commission) seeking an order suspending Hurst for 30 days.
11. On or about February 3, 2009, Hurst filed a grievance with Reidy pursuant to the terms of the Agreement.
12. Filing a grievance is activity protected by the Act.
13. On or about February 19, 2009, Reidy filed with the Commission an amendment to the charges described in paragraph 10 seeking an order for Hurst's termination instead of the 30-day suspension.
14. On or about April 8, 2009, the Respondent denied the Charging Party's grievance.
15. Subsequent to an appeal to grievance arbitration, on or about July 7, 2010, said grievance was denied by Arbitrator Michelle Camden.
16. Pursuant to Chief Reidy filing charges seeking discharge of Hurst, the Commission conducted its first day of public hearing on August 13, 2009.
17. Said Commission conducted a second and final day of public hearing on said matter on August 14, 2009.
18. On or about October 13, 2009, said Commission issued its "Findings and Decisions" granting Chief Reidy's request to terminate Hurst.
19. On or about July 12, 2011, pursuant to appeal through administrative review, the 4th District Appellate Court issued its decision affirming said Commission's "Findings and Decisions."
20. On or about March 10, 2003, pursuant to the Illinois Peace Officers Bill of Rights Act, an administrative hearing was conducted, wherein Hurst was questioned regarding allegations that he, while off duty, exposed his penis in public (at a bar).

21. Pursuant thereto, on or about March 26, 2003, Chief Reidy filed charges with the Commission seeking Hurst's discharge.
22. On or about May 22, 2003, the Commission met to conduct a hearing wherein the parties reached a negotiated settlement wherein Hurst was reduced from the rank of Sergeant to Patrol Officer and served a 15-day suspension without pay.

## **II. ISSUES AND CONTENTIONS**

The Complaint for Hearing alleges two instances of unlawful retaliation. First, it alleges that the Respondent violated Section 10(a)(1) of the Act when Chief Reidy sought to amend a disciplinary complaint against Officer Hurst in order to retaliate against Officer Hurst for filing a grievance with Chief Reidy. Second, it alleges that the Respondent violated Sections 10(a)(1) and (2) of the Act when Chief Reidy filed and amended the complaint against Officer Hurst in order to retaliate against Officer Hurst for being active and visible in his support for the Charging Party. The Respondent disputes both of those allegations and moves that I issue a finding of sanctions against the Charging Party.

## **III. FINDINGS OF FACT**

On January 30, 2009, Chief Reidy removed Officer Hurst from his juvenile officer assignment and filed a disciplinary complaint with the Commission. The complaint alleged that Officer Hurst continuously and repeatedly used the Respondent's computers to view pornography while on duty. In its initial draft, the complaint sought Hurst's removal, but prior to its filing, the word "removal" was crossed out and the word "suspended" was written above it. It was Chief Reidy's handwriting.

According to Chief Reidy, Officer Hurst's union activities were not discussed when Chief Reidy, the Respondent's attorney, and the city administrator initially determined as a group that Officer Hurst should be suspended. Purportedly, Chief Reidy was concerned about the length and expense of litigating a discharge. That concern was never put in writing.

At some point after filing the complaint, Chief Reidy firmly decided that Officer Hurst's actions demonstrated that Officer Hurst was unfit to be a police officer. Chief Reidy then shared that view with the mayor, who said he would back whatever decision Chief Reidy made. On February 19, 2009, Chief Reidy filed a motion seeking to amend his complaint and have Officer Hurst discharged rather than suspended. The Commission later issued a decision and discharged Officer Hurst on October 13, 2009. The 4th District Appellate Court affirmed the Commission's decision on July 12, 2011.

Officer Hurst orally presented a grievance to Chief Reidy on February 3, 2009. The grievance alleged that Chief Reidy improperly denied Officer Hurst overtime opportunities and the opportunity to bid for a shift. The grievance was denied. Officer Hurst later filed a written version of the same grievance on February 12, 2009. (As noted, Chief Reidy filed his motion to amend on February 19, 2009.) The Respondent denied the grievance a second time on April 8, 2009. An arbitrator issued an award denying the grievance on January 7, 2010.

#### **IV. DISCUSSION AND ANALYSIS**

Did the Respondent violate Section 10(a)(1) or (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 used in this instance, where the Complaint for Hearing specifically alleges that the Respondent unlawfully retaliated. 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, the parties have stipulated that Officer Hurst engaged in protected activity when he filed a grievance, and indeed it is well settled that filing a grievance is protected, concerted activity. Pace Suburban Bus Division of the Regional Transportation Authority v. Illinois Labor Relations Board, 406 Ill. App. 3d 484, 495, 942 N.E.2d 652, 662 (1st Dist. 2010); State of Illinois, Department of Central Management Services (Department of

Human Services, Ann Kiley Developmental Center), 20 PERI ¶73 (IL LRB-SP 2004). Serving as a local union president and serving on a negotiating committee are similarly examples of protected conduct. Village of Oak Park, 28 PERI ¶111 (IL LRB-SP 2012); City of Princeton (Fire Department), 22 PERI ¶139 (IL LRB-SP 2006). Therefore, the first element is satisfied for both allegations of the Complaint for Hearing.

Regarding the second element, the parties have stipulated (and the record otherwise demonstrates) that Officer Hurst filed a grievance with Chief Reidy. The parties have also stipulated that, at all times material, Officer Hurst was active and visible in his support for the Charging Party, including but not limited to serving as the local union president. In addition, Chief Reidy admits that he knew that Officer Hurst was sometimes on the Charging Party's negotiating team, and that activity is certainly "active and visible support." Village of Oak Park, 28 PERI ¶111. Under those circumstances, the second element is satisfied for both allegations. I am unmoved by the possibility that Chief Reidy was unaware that Officer Hurst was the local union president at the time of the disciplinary complaint's filing and its amendment.

Regarding the third element, it is undisputed that Officer Hurst's discharge was an adverse employment action, but the Charging Party must still establish that the protected conduct was a motivator factor. A charging party may do so 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 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, no direct evidence supports the Complaint for Hearing's allegations and there has been no disparate treatment for similar conduct. Further, Chief Reidy consistently testified without contradiction that his decision to amend his complaint and seek discharge had nothing to do with Officer Hurst's union office or other union activity. Though the Charging Party contends otherwise in its post-hearing brief, I find that one cannot reasonably characterize Chief Reidy's purported fear of costly litigation as hostility toward union activity. At most, the Charging Party can rely on arguably suspicious timing.

As outlined above, Officer Hurst presented a grievance and later filed the same on February 3 and 12, 2009, and Chief Reidy filed his motion to amend his complaint against Officer Hurst on February 19, 2009. That sort of timing could theoretically be considered circumstantial evidence suggesting an improper motive. Nevertheless, temporal proximity alone is ordinarily insufficient to establish animus. Village of Hazel Crest, 30 PERI ¶72 (IL LRB-SP 2013); Village of Oak Park, 30 PERI ¶51 (IL LRB-SP 2013). In my view, that principle is especially compelling in this instance, where the Respondent initiated the discipline in advance of Officer Hurst's grievance, Officer Hurst actively and visibly supported the Charging Party for some time before the events at issue occurred, and the Charging Party concedes that there was a "legitimate reason" to discipline Officer Hurst. See County of Knox and Knox County Sheriff, 9 PERI ¶2030 (IL SLRB 1993); Lake Zurich School District No. 95, 1 PERI ¶1031 (IL ELRB 1984); Liberty Mutual Insurance Company v. National Labor Relations Board, 592 F.2d 595, 603 (1st Cir. 1979). Under these circumstances, I find that the third element is not satisfied and that the burdened Charging Party has failed to establish a prima facie case as required.

Accordingly, I need not conduct a “dual motive analysis.” City of Burbank, 128 Ill. 2d at 345, 538 N.E.2d at 1149.

Notably, the Charging Party contends that this case presents “‘shifting explanations’ evidence” as well. However, the Respondent has never really shifted its explanation. Rather, it amended the level of discipline it sought to impose on Officer Hurst. Throughout this case, the Respondent has consistently and believably explained that it sought to discipline Officer Hurst because he evidently used the Respondent’s computers to view pornography while on duty. Whatever “inconsistencies” existed have been explained by uncontroverted testimony.

Should the Charging Party be sanctioned?

The Respondent’s motion for sanctions is centrally concerned with the Charging Party’s actions during the hearing. The motion suggests, inter alia, that the Charging Party did not introduce any evidence or call any witnesses. However, as the Respondent acknowledges elsewhere in the same motion, the Charging Party technically submitted a number of joint exhibits during the hearing. While it is true that the Charging Party’s attorney called no witnesses, he meaningfully cross-examined and attempted to impeach the Respondent’s sole witness and central decision-maker, Chief Reidy. Those circumstances generally do not support the motion.

Separately, I note that the Charging Party has established a significant portion of a prima facie case. I also submit that, under different circumstances, suspicious timing could tip the scale differently. See City of Springfield, Department of Public Works, 6 PERI ¶2020 (IL SLRB 1990); Jim Causley Pontiac v. National Labor Relations Board, 620 F.2d 122, 126 (6th Cir. 1980). The Board and the courts are merely “reluctant” to infer an improper motive based on timing alone. County of Know and Knox County Sheriff, 9 PERI ¶2030 (IL SLRB 1993). To

that extent, it can reasonably be argued that the Charging Party has sufficiently presented a debatable position that is therefore above sanction. County of Bureau and Bureau County Sheriff, 29 PERI ¶163 (IL LRB-SP 2013); Chicago Transit Authority, 16 PERI ¶3021; County of Cook, 15 PERI ¶3001 (IL LLRB 1998); County of Rock Island and Sheriff of Rock Island County, 14 PERI ¶2029 (IL SLRB 1998). Accordingly, the Respondent's motion is denied.

#### V. CONCLUSION OF LAW

I find that the Charging Party has failed to demonstrate by a preponderance of the evidence that the Respondent violated Section 10(a)(1) or (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 October 9, 2014.**

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**Martin Kehoe  
Administrative Law Judge**