STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Metropolitan Alliance of Police, Northern Illinois University, Chapter 291,	)	
Charging Party	)	
and	)	Case No. S-CA-10-299
Northern Illinois University,	)	
Respondent	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On June 9, 2010, the Metropolitan Alliance of Police, Northern Illinois University, Chapter 291 (Charging Party) filed a charge with the State Panel of the Illinois Labor Relations Board (Board) pursuant to Section 11 of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010) as amended (Act), and the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code, Parts 1200 through 1240, alleging that Northern Illinois University (Respondent) violated Sections 10(a)(1), 10(a)(2), and 10(a)(3) of the Act. The charges were investigated in accordance with Section 11 of the Act and on August 10, 2010, the Executive Director of the Illinois Labor Relations Board issued a Complaint for Hearing.

A hearing in this case was held on November 18, 2010, in the Chicago Office of the Illinois Labor Relations Board. At that time, the Charging Party presented evidence in support of the allegations and all parties were given an opportunity to participate, adduce relevant evidence, examine witnesses, argue orally, and file written briefs. After full consideration of the parties' stipulations, evidence, and arguments, and upon the entire record of the case, I recommend the following.

I. PRELIMINARY FINDINGS

The parties stipulate, and I find, as follows:

1. At all times material hereto, the Respondent has been a public employer within the meaning of Section 3(o) of the Act;

2. At all times material hereto, the Respondent has been subject to the jurisdiction of the Board's State Panel pursuant to Section 5(a-5) of the Act;
3. At all times material hereto, the Respondent has been a unit of local government subject to the Act pursuant to Section 20(b) of the Act; and
4. At all times material hereto, Charging Party has been a labor organization within the meaning of Section 3(i) of the Act.

II. ISSUES AND CONTENTIONS

At issue is whether the Respondent violated Sections 10(a)(1), 10(a)(2), and/or 10(a)(3) of the Act by prohibiting Officer Anthony Kafka's use of a patrol vehicle or by relieving Kafka of his police powers and placing him on paid administrative leave.[1] The Charging Party alleges that the Respondent's conduct violated the Act because these actions were taken in retaliation for Kafka's protected union activities, including filing grievances on behalf of himself and the union and serving as a union officer, and for Kafka's protected activity before the Board in testifying on the union's behalf in a hearing for an unfair labor practice charge.

The Respondent denies that it has prohibited Officer Kafka from operating a patrol vehicle, and argues that insofar as it did limit Kafka's use of a patrol vehicle, this action does not constitute discrimination against a public employee under the Act. Furthermore, the Respondent denies that it took either of the complained-of actions in retaliation for Kafka's union activities or his protected activity before the Board. Instead, the Respondent maintains that it limited Kafka's use of a patrol vehicle because he was the only officer in the department with two at-fault accidents in a department vehicle. Likewise, the Respondent maintains that it relieved Kafka of his police powers and placed him on paid administrative leave following an outburst in the squad room in which Kafka acknowledged he behaved inappropriately.

[1] The Complaint for Hearing in this matter also alleged that the Respondent had denied or misplaced requests filed by Kafka seeking authorization to use personally purchased duty equipment and had cancelled Kafka's previously scheduled vacation in retaliation for his protected activity and thus in violation of Sections 10(a)(1), 10(a)(2), and 10(a)(3) of the Act. At the hearing in this matter, in its case-in-chief, the Charging Party failed to provide any evidence as it related to the above issues. As such, the undersigned granted the Respondent's Motion to Dismiss as to these allegations.

III. FINDINGS OF FACT

The Charging Party is the exclusive bargaining representative of a bargaining unit consisting of all sworn police officers below the rank of sergeant employed by the Respondent. The bargaining unit represented by the Charging Party consists of approximately 41 police officers, including Officer Anthony Kafka.

The Northern Illinois University Police Department (Department) has three divisions, each headed by a director who reports directly to Police Chief Donald Grady. Lieutenant Curtis Young is the Director of Administrative Services. Young is responsible for the Department's Public Information Officer, Administrative Sergeant, and Quartermaster.

Lieutenant Todd Henert is the Director of Police Operations. He is responsible for the Department's Housing, Education and Liaison Program (HELP) and the patrol division. Officers in HELP patrol residence halls, their exteriors, and adjacent parking lots, and provide educational programming. The patrol division is responsible for vehicle patrol, and the officers of the patrol division are regularly assigned patrol vehicles.

Lieutenant Daren Mitchell is the Director of Emergency Management and Planning. Mitchell is responsible for the Department's Coordination, Analysis, and Programming (CAP) unit, campus unit, forensic and emergency management specialists, and the Safe Areas for Everyone (SAFE) unit. The CAP unit works out of residence halls and community safety centers where they assist and build relationships with students. They also track crime, analyze data and develop solutions in order to prevent crime, and provide intelligence to officers in other units. The campus unit is comprised of plain clothes officers who attend classes at the University in order to intervene in certain circumstances, a role Henert likened to the federal air marshal program. Finally, officers in the SAFE unit are responsible for patrolling educational and administrative buildings during business hours. Sergeant Jason Wright is in charge of the SAFE unit, which is also staffed by Officers Hodder, Diefenderfer, Clifton, and Kafka.

When assigning patrol vehicles to officers outside of the patrol division, no campus program officer is assigned a vehicle because they work under cover. Officers who are assigned to the northwest region of the University's approximately 800-acre campus are typically assigned to patrol vehicles due to the distance between that location and the Department's headquarters. One HELP officer is assigned to this location and is routinely assigned a patrol vehicle. Furthermore, officers who handle canines are typically assigned vehicles. The canines used by

the Department are trained to detect explosives rather than detecting drugs or assisting with apprehensions, and are thus used predominantly for exterior patrols and do not intermingle with the student population. Henert testified that four Department vehicles had been converted specifically for the purpose of transporting canines. One CAP officer is routinely assigned a patrol vehicle both because he handles a canine and because he is assigned to the University's northwest region. Officers Hodder and Diefenderfer in the SAFE unit are also routinely assigned vehicles because they handle canines.

The Department's general preference is that officers in the HELP, CAP, and SAFE units patrol on foot rather than in a patrol vehicle. This makes the officers more accessible to the University population and, according to Henert, more observant. However, when an officer assigned to the patrol division is unable to work a shift, the patrol sergeant assigned to that shift will assign an officer from another program to supplement patrol. This officer would then be assigned a patrol vehicle. In making such an assignment, however, Henert testified that preference would be given to canine handlers, who have already been assigned a patrol vehicle, and to paramedics. Only the undercover campus officers are never assigned to a patrol vehicle.

There is no difference in pay, benefits, or hours for officers who are assigned to patrol vehicles and officers who are not.

Officer Kafka's Tenure with the Department

Kafka is a public employee who began working for the Department as a police officer on August 6, 2001. In June 2008, he was elected union steward and union vice president. From June 2009 through May 27, 2010, he served as the acting union president. During this time, Kafka filed seven grievances on his own behalf, seven on behalf of the union, and assisted other members of the bargaining unit with filing 10 other grievances. The seven grievances Kafka filed on behalf of the union were all filed in September and December 2008. He could not recall the dates of grievances filed on his own behalf. Furthermore, Kafka admitted that the Respondent would have no knowledge of the assistance he gave in filing the remaining 10 grievances. On January 20 and 21, 2010, Kafka testified before the Board on the union's behalf in an unfair labor practice proceeding.

In April 2002, Kafka was involved in an at-fault accident in his patrol vehicle when he struck a pole in a University parking lot. He was not disciplined following this accident. In November 2008, Kafka was involved in a second at-fault accident that resulted in approximately

$1600 in damage to his patrol vehicle. Following this accident, Henert recommended a seven-day suspension for Kafka but Cheif Grady ultimately gave Kafka a three-day suspension. A grievance was filed over this discipline and proceeded to grievance arbitration. At the time of the hearing in this matter, however, no decision had been issued.

In or about January 2009, Kafka was transferred from patrol to the SAFE unit. Following this transfer, Kafka was predominantly assigned to foot patrol and was no longer regularly assigned a patrol vehicle. Henert testified that Kafka's second at-fault accident prompted the transfer. Henert transferred Officer Karen Clifton to the patrol division in Kafka's place because she had never had an at-fault accident, therefore he did not have concerns about Clifton operating a patrol vehicle. At the time, Henert was aware that Clifton was also a union officer. Subsequently, Henert expressed concern over Kafka's driving record to the sergeants in the patrol division. He instructed the sergeants that, due to Kafka's two at-fault accidents, he would prefer that Kafka only be assigned a patrol vehicle in circumstances where doing so was operationally necessary. Henert testified that this decision was in the Department's best interest for liability and safety reasons, stating that he could not recall another officer during his 22 years of service with Department who had been involved in two at-fault accidents.

On several occasions, Kafka questioned sergeants and lieutenants in the Department, including his direct supervisor Sergeant Jason Wright, about the reasons for his reassignment to the SAFE unit and why he was never assigned to a patrol vehicle. Henert did not feel as though he needed to explain the reassignment to Kafka because doing so was Henert's prerogative as the lieutenant in charge of the patrol division. However, in the past, Henert had explained reassignments when transferring officers out of the patrol division for absenteeism. It does not appear that anyone ever explained to Kafka that his access to a patrol vehicle had been limited, nor the reasons therefore. At some point in 2010, Kafka complained about the Department's apparent refusal to assign him to a patrol vehicle. Following this complaint, Kafka was allowed to drive a patrol vehicle for a total of six-and-a-half hours.

Events of May 27, 2010

On May 27, 2010, Kafka was scheduled to work a shift starting at 7:00 a.m. He arrived in the squad room a few minutes prior to the start of his shift for the Department's morning briefing. When he arrived in the squad room, he immediately looked at the schedule for the week beginning May 31, 2010. The schedule had originally been posted on May 24th, but had

been revised and re-posted on May 26th. Clifton, one of Kafka's fellow officers in the SAFE unit, had broken her foot on May 20th and was unable to work; Kafka felt as though the altered schedule gave him most of Clifton's shifts. The changes also interfered with his plans for previously scheduled vacation time for his wedding anniversary.

Upon seeing the changes to the schedule, Kafka became frustrated with this, and what he characterized, as "other things that had been going on" in the Department. By this time, Sergeant Jackson of the patrol division and Officer Cynthia Zimberhoff of the CAP unit had arrived in the squad room for the morning briefing. Kafka admits that he became emotional and had an inappropriate outburst. In his frustration, Kafka hit either the wall or table, or both, with his hands. He also started to shout, his voice was trembling, and he appeared to be in tears. When Jackson asked whether this was about Kafka's anniversary, he responded "Yes, it's about my fucking anniversary." Kafka used "a lot of foul language" during his outburst. At some point Kafka stated "I don't know whether I should shoot Karen [Clifton] or shoot the rest of you all." He then told Jackson he thought he needed to go home.

Kafka filled out and submitted to Jackson an absence request stating the reason for his absence as "psychological distress!" He then left with Jackson's permission. Kafka first went to the Department's locker room and put his service weapon in his locker. Kafka attributed this decision to his state of mind explaining that just as he would not want the responsibility of carrying a gun in the role of a law enforcement officer while he had been drinking alcohol, he likewise did not want the responsibility of carrying a weapon while in his distressed state.

Approximately one hour after the incident in the squad room, Kafka called the dispatch line and Jackson answered. Jackson confirmed that Kafka knew he was speaking on a recorded line and stated "If anyone asks, my gun is in my locker."

At or around 9:30 a.m., Jackson and Lieutenant Mitchell, the Director of Emergency Management and Planning and the acting Chief for the day, informed Henert that a serious incident had taken place in the squad room that morning. Jackson then explained what he had witnessed that morning. As a result of this conversation, Mitchell and Henert met with representatives from the University's Human Resources department to determine a course of action. By approximately 10:00 or 10:30 that morning, Mitchell, Henert, and the associate vice president and assistant vice president of human resources determined that Kafka should be

placed on paid administrative leave pending the outcome of an investigation into Kafka's conduct.

At or around 11:00 a.m., Kafka was seen by a counselor at the University's wellness center, and at around 2:00 p.m. he was seen by a doctor who recommended Kafka take two weeks of leave under the Family and Medical Leave Act (FMLA) for work-related stress. While Kafka was on his way to the Department headquarters to submit the FMLA paperwork he had received from his doctor, he received a call from Jackson informing him that he was being placed on paid administrative leave pending an investigation into his behavior that morning.

At some point, apparently after Kafka was notified of the decision to place him on paid administrative leave, he called Clifton to explain the incident. Clifton testified that Kafka told her that he had become upset and made statements in the squad room, without elaborating that the statements related to the possibility of shooting her. Subsequently, Mitchell called Clifton to verify her safety and explained Kafka's comments to her.

At the hearing in this matter, Kafka affirmed that he never had any intention to shoot anyone. Instead, Kafka explained that he felt he was among friends who should have know he was joking. However, Kafka acknowledged that he never stated he was joking, nor was he laughing or smiling at the time. Zimberhoff testified that she did not feel threatened, though Henert alleges that immediately after the incident she stated she did. Likewise, Henert alleges that Jackson stated he felt threatened when recounting the incident, but Jackson testified that he did not relieve Kafka of his service weapon because he did not feel Kafka was a threat. Clifton testified that she did not fear for her safety after she was informed of the incident.

Treatment of Other Union Officers and Department Personnel

Zimberhoff held the union office of treasurer. She also testified at the same January 20 and 21, 2010, hearing before the Board at which Kafka provided testimony. Since that hearing Zimberhoff testified that she had not been disciplined by the Respondent. However, she did receive a counseling statement which was placed in her file for forgetting to check her patrol vehicle pursuant to Department policy.

Officer Tony Auiala also testified at the same January 20 and 21, 2010, hearing. He also testified that he had not received any disciplinary actions since that January hearing. Auiala went on to describe a January 2004 incident in which Mitchell, a sergeant at the time, had an outburst at Lincoln Hall on campus. According to Auiala, Mitchell had been suspended and

gathered his shift at Lincoln Hall, allegedly to apologize for his behavior that led to the suspension. Auiala testified that, shortly after apologizing, Mitchell "blew up," threatening that if he found out who had "ratted [him] out" he would "follow policy and procedure to write each one of you out." Auiala testified that Mitchell used profanity during this outburst, but did not threaten or otherwise suggest he might shoot his colleagues. There is no evidence as to whether Mitchell received further discipline for this outburst.

Finally, Jackson served as union steward prior to his promotion to sergeant. During the three years in which he served as steward, he filed two grievances on behalf of the union, neither of which proceeded to interest arbitration. However, he never filed any unfair labor practice charges on his own or on the union's behalf. Jackson testified that during this time he received second-hand information from his supervising sergeant that Police Chief Grady had referred to him as a "rebel rouser."

IV. DISCUSSION AND ANALYSIS

The Charging Party alleges that the Respondent prohibited Kafka's use of a patrol vehicle and placed him on paid administrative leave in retaliation for Kafka's union activity and for testifying on the union's behalf before the Board, thus violating Sections 10(a)(1), 10(a)(2), and 10(a)(3) of the Act.

Section 10(a)(1) makes it an unfair labor practice for an employer or its agents to interfere with, restrain, or coerce employees in the exercise of rights guaranteed under the Act. 5 ILCS 315/10(a)(1) (2010). Section 10(a)(2) prohibits an employer or its agents from discriminating in regard to any term or condition of employment in order to encourage or discourage membership or support for any labor organization. 5 ILCS 315/10(a)(2) (2010). Section 10(a)(3) prohibits an employer or its agents from discharging or otherwise discriminating against an employee because that employee has signed or filed an affidavit, petition, or charge or provided any information or testimony under the Act. 5 ILCS 315/10(a)(3) (2010).

Section 10(a)(1) does not generally require proof of illegal motive. However, when an employee alleges adverse employment action in retaliation for engaging in protected activity, the motivation of the employer must be examined. Village of Barrington Hills, 29 PERI ¶ 15 (IL LRB-SP 2012) (aff'd on other grounds by unpublished opinion, 2013 IL App (1st) 121832-U (1st Dist. 2013)).

To establish this violation of 10(a)(1) or 10(a)(2), a charging party must prove by a preponderance of the evidence that (1) an employee engaged in union or protected, concerted activity; (2) the respondent had knowledge of such activity; (3) the respondent took an adverse employment action against the employee; and (4) such action was based in whole or in part on union animus or that the employee' s protected conduct was a substantial or motivating factor in the adverse action. City of Burbank v. Illinois State Labor Relations Board, 128 Ill. 2d 335, 345 (1989). These same steps are followed with respect to alleged violations of Section 10(a)(3) except that under Section 10(a)(3) the motivation for the alleged adverse action must be the charging party' s participation in or use of the Board' s regulatory function or procedures. State of Illinois, Dep't of Central Mgmt Serv. (Dep't of Human Serv.), 25 PERI ¶ 90 (IL LRB-SP 2009) (citing City of Burbank, 128 Ill. 2d 335).

If a charging party establishes the prima facie elements of a violation of either Section 10(a)(2) or (3), the burden of proof shifts to the respondent to demonstrate by a preponderance of the evidence that it had a legitimate business reason for the adverse employment action and that it would have taken the same action notwithstanding the employer' s unlawful animus. City of Burbank, 128 Ill. 2d at 346. However, merely proffering a legitimate business reason for the adverse action will not satisfy a respondent's burden. Id. It must also be determined whether the employer's reasons are bona-fide or pretextual. Id. If the reasons offered are a mere litigation figment or were not relied upon, then the reasons offered will be determined to be pretext and the inquiry is over. Id.

The fact that Kafka engaged in protected activity is not contested. During his tenure with the Department, Kafka held several union offices. At the time he was placed on paid administrative leave, Kafka was serving as union steward, vice president, and acting president. He had also filed several grievances on behalf of himself and the union.[2] Finally, in January 2010 Kafka provided testimony before the Board at a hearing for an unfair labor practice charge. Likewise, the Respondent concedes that it was aware of Kafka's protected activity. At issue is

[2] Respondent argues that Kafka's grievance-filing activity cannot be considered in this matter because: (1) some of the grievances filed by Kafka are at issue in another unfair labor charge involving the parties; and (2) some were filed outside of the six-month statutory time limit pursuant to Section 11(a) of the Act. The Respondent's argument ignores the fact that the Charging Party's grievance filing is merely evidence of the Respondent's knowledge of his protected activity. Moreover, the conduct at issue in this charge - the same grievance filing activity - could reasonably be the Respondent's motivation for the alleged retaliatory conduct complained of in both charges. Furthermore, the six-month statutory limit is applicable to actions that may constitute an unfair labor practice, and not to the protected activity that allegedly motivated those actions.

the Charging Party's ability to prove that the Respondent took adverse action against Kafka based in whole or in part on anti-union animus or that Kafka's protected activity was a substantial or motivating factor. As discussed below, I conclude that the Charging Party is unable to establish its prima facie case in this matter.

First, the Respondent argues that any restrictions or limitations placed on Kafka's use of a patrol vehicle do not constitute an adverse action which may support an unfair labor practice charge because there is no difference in pay, benefits, hours, or opportunities for overtime for officers assigned to foot patrol rather than vehicle patrol.

Section 10(a)(2) explicitly states that an employer may not discriminate in regard to hire or tenure of employment or any term or condition of employment. 5 ILCS 315/10(a)(2). Likewise, Section 10(a)(3) prohibits discharge or other discrimination. 5 ILCS 315/10(a)(3). No mention is made of any requirement of adverse tangible result or adverse financial consequence resulting from such discrimination, and it is directly contrary to the policy of the Act, as well as the express language of Section 10, to require that discrimination in the context of an unfair labor practice be accompanied by an adverse tangible result or financial consequence. Clerk of the Circuit Court of Winnebago County, 17 PERI ¶ 2038 (IL LRB-SP 2001) (citing City of Chicago v. Illinois Local Labor Relations Board, 182 Ill. App. 3d 588 (1988)). Thus, merely because an employee did not suffer any negative financial consequences due to an action does not defeat an unfair labor practice charge. Id. Examples of adverse employment action include discharge, discipline, assignment to more onerous duties or working conditions, layoff, reduction in pay, hours or benefits, imposition of new working conditions or denial of advancement. State of Illinois, Dep't of Central Mgmt Serv. (Dep't of Employment Security), 11 PERI ¶ 2022 (IL SLRB 1995).

In this case, testimony established that the restrictions required Kafka to patrol a nearly 800-acre campus by foot rather than by car during his shifts. It would be reasonable to conclude that this resulted in more onerous duties or working conditions for Kafka. Therefore, I will assume, *arguendo*, that the restrictions placed on Kafka's use of a patrol vehicle constitute an adverse action sufficient to support an unfair labor practice charge. Clearly, placing Kafka on paid administrative leave also constitutes an adverse action.

The Respondent also argues that the Charging Party has failed to demonstrate an unlawful motive for the Respondent's actions in restricting Kafka's use of a patrol car or in

placing him on paid administrative leave, alleging instead that it had a legitimate business reason to take both actions. An employer' s unlawful motive may be inferred by direct or circumstantial evidence, including an employer' s expressed hostility toward unionization; proximity in time between the union activity and the adverse action; a pattern of targeting those engaging in union activity; disparate treatment of union employees and other employees; shifting explanations for the adverse action; and inconsistency in the reasons given for its actions against a charging party as compared to other actions of the respondent. City of Burbank, 128 Ill. 2d at 345-46. However, mere proximity in time between the protected activity and the alleged adverse employment action is not, by itself, sufficient to support an inference that an employer's actions were unlawfully motivated. City of Kewanee, 23 PERI ¶ 110 (IL LRB-SP 2007); Village of Lisle, 24 PERI ¶ 53, (citing Metropolitan Sanitary District, 2 PERI ¶ 3012 (IL LLRB 1986)).

Regarding the restrictions on Kafka's use of a patrol vehicle, the Charging Party concludes in its post-hearing brief that "it is clear that Officer Kafka was targeted" for his protected activity, stating that "[t]he timing is more than coincidental or by chance." However, as stated above, timing alone is not sufficient. Moreover, it is far from clear that the timing in this case is even suspicious. Although the Complaint alleges that the restrictions began in January 2010 after Kafka's testimony before the Board, the record clearly establishes that Kafka had been restricted in his use of a patrol vehicle beginning with his transfer to the SAFE unit in January 2009. In fact, the timing more closely coincides with Kafka's second at-fault accident, and thus supports the Respondent's explanation of its actions.

Moreover, the Charging Party's attempt to show Kafka's disparate treatment through testimony that he was the only officer not working undercover who was restricted in his use of a patrol vehicle, is unpersuasive for two reasons. First, the restrictions began with Kafka's transfer to the SAFE unit, a foot patrol unit, from the vehicle patrol division. Henert initially replaced Kafka in the patrol division with Clifton, who was also a union officer. This is evidence that anti-union animus played no role in the initial transfer. It also negates any inference of disparate treatment between union and non-union employees.

Additionally, the Charging Party is unable to show disparate treatment because those employees whose use of a patrol car was not restricted were not similarly situated employees. Instead, Kafka was the only employee of the Department that had been involved in two at-fault motor vehicle accidents. The record establishes that no other Department employee had a

driving record such as Kafka's that would reasonably lead supervising officers to be concerned about public safety and Department liability while they were behind a wheel. The Charging Party attempts to negate the importance of Kafka's driving record by arguing that the imposition of discipline for the second at-fault motor vehicle accident was contrary to provisions of the parties' collective bargaining agreement. However, there is no evidence that limiting Kafka's use of a patrol vehicle is disciplinary in nature.

Likewise, the Charging Party failed to demonstrate disparate treatment between Kafka and non-union employees in the Respondent's decision to place Kafka on paid administrative leave following his outburst in the squad room. The Charging Party elicited testimony that tends to indicate that Mitchell was treated less severely after an outburst while he was a sergeant when he cursed at his subordinates and threatened to "follow policy and procedure to write each one of [them] out." However, no testimony established what, if any, punishment or administrative action Mitchell was subject to for this outburst.

Furthermore, it is again clear that Mitchell was not similarly situated to Kafka in this instance. Kafka wondered aloud about which of his colleagues he should shoot, appeared visibly upset while doing so, and shortly thereafter submitted a request for absence in which he informed a supervising officer that he was experiencing psychological distress. Whatever the seriousness of Mitchell's outburst, any threat to follow policy and procedure to adversely affect another officer's employment does not rise to the level of an armed officer visibly and admittedly experiencing psychological distress while speaking of shooting a coworker, an act which violates the law and endangers the public.

The Respondent's conduct in taking this outburst seriously and quickly initiating an investigation during which Kafka was placed on paid administrative leave is not only reasonable but responsible. Given the nature of each outburst, I cannot conclude that the Charging Party has established that Kafka was treated disparately vis-à-vis Mitchell following his outburst.

Finally, the Charging Party argues that the Respondent has engaged in a pattern of targeting those engaged in union activity, going so far as to include in its statement of facts in its post-hearing brief that "Respondent has a history of interfering and harassing specific union members who invoke their rights." There is no evidence in the record to support the Charging Party's claim.

Therefore I conclude that the Charging Party has not established a prima facie case as required by Sections 10(a)(1), 10(a)(2) and 10(a)(3) of the Act. For the reasons stated above, I conclude that the Charging Party has failed to establish a prima facie case for the unfair labor practices charged in the Complaint, and hereby recommend that the complaint be dismissed.[3]

V. CONCLUSIONS OF LAW

1. Respondent did not violate Sections 10(a)(1), 10(a)(2), or 10(a)(3) of the Act when it restricted Kafka's use of a patrol vehicle.
2. Respondent did not violate Sections 10(a)(1), 10(a)(2), or 10(a)(3) of the Act when it placed Kafka on paid administrative leave on May 27, 2010.

VI. RECOMMENDED ORDER

I recommend that the Complaint be dismissed.

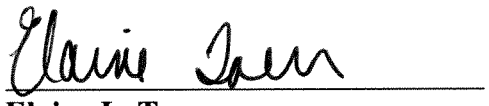
VII. EXCEPTIONS

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 at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. Exceptions, responses, cross-

[3] Assuming I had found that the Charging Party established a prima facie case based on either of the complained-of actions, I would nonetheless determine that the Respondent had a legitimate business reason for each. Kafka's use of a patrol vehicle was limited for the legitimate business reason that the Department needed to minimize the risk to public safety and property based on Kafka's driving record. Kafka was placed on paid administrative leave while the Department investigated serious allegations concerning his conduct in the squad room the morning of his outburst. Nothing in the record indicates that either reason was pretextual or was not relied upon. While the Charging Party suggests pretext on the basis that other employees were not alarmed or did not feel threatened by Kafka's outburst, these assertions are not relevant in light of the serious public safety concerns that arise where an armed officer speaks of shooting someone, particularly when accompanied by visible and admitted psychological distress.

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 at Chicago, Illinois, this 1st day of July, 2013,



Elaine L. Tarver
Administrative Law Judge
Illinois Labor Relations Board