STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Levita Jones, Charging Party and State of Illinois, Department of Central Management Services (Department of Human Services) Respondent-Employer and American Federation of State, County and Municipal Employees, Council 31, Respondent-Union	))	Case Nos. S-CA-12-038 S-CB-12-009

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On August 9, 2011, Levita Jones (Charging Party or Jones) filed a charge with the State Panel of the Illinois Labor Relations Board (Board) in Case No. S-CA-12-038 alleging that the State of Illinois, Department of Central Management Services, Department of Human Services (Employer) engaged in unfair labor practices within the meaning of Section 10(a) of the Illinois Public Relations Act, 5 ILCS 315 (2012), as amended (Act). On August 9, 2011, the Charging Party also filed a charge with the Board in Case No. S-CB-12-009 alleging that the American Federation of State, County and Municipal Employees, Council 31 (Union or AFSCME Council 31) engaged in unfair labor practices within the meaning of Section 10(b) of the Act. The charges were investigated in accordance with Section 11 of the Act, and on December 20, 2011, the Board's Executive Director issued a Complaint for Hearing and Order Consolidating Cases. A hearing was held on July 25, 2012, and September 13, 2012, in Chicago, Illinois by the

undersigned. All parties appeared at the hearing and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally. Written briefs were timely filed by all parties. After full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of the case, I recommend the following.

I. PRELIMINARY FINDINGS

1. At all times material, the Employer has been a public employer within the meaning of Section 3(o) of the Act and the Board has jurisdiction over this matter pursuant to Section 5(a) of the Act.

2. At all times material, the Union 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 a public employee within the meaning of Section 3(n) of the Act.

5. At all times material, the Union has been the exclusive representative of a bargaining unit known as RC-9-OCB (Unit), composed of certain employees of the Employer, including the Charging Party.

6. At all times material, the Employer and the Union have been parties to a collective bargaining agreement setting out terms and conditions of employment for employees in the Unit.

II. ISSUES AND CONTENTIONS

The first issue is whether the Employer violated Sections 10(a)(2) and (1) of the Act when it terminated the Charging Party's temporary assignment in retaliation for the Charging Party's inquiries and protests concerning an overtime verbal agreement between the Employer and the Union. The Employer contends that the Charging Party has failed to establish each element of her prima facie case.

The second issue is whether the Union violated Section 10(b)(3) of the Act when it allegedly requested that the Employer rescind the Charging Party's temporary assignment in retaliation for her inquiries and protests concerning the overtime verbal agreement. The Union contends that the Charging Party has failed to establish a Section 10(a)(2) violation, which is a prerequisite for a Section 10(b)(3) violation. In addition, the Union asserts that the Charging Party has not met her burden to prove the elements of a Section 10(b)(3) violation.

III. FACTS

Background

The Charging Party is a Mental Health Technician II employed at the Employer's Elisabeth Ludeman Developmental Center (Ludeman). Ludeman is a state operated residential facility that treats and houses persons with developmental disabilities. Ludeman has around 700 employees. These employees work in over 60 buildings within Ludeman.

AFSCME Council 31 is organized into various local unions and each local union is an affiliate of AFSCME Council 31. AFSCME Council 31 is the certified representative for purposes of collective bargaining for all employees in its jurisdiction. Employees employed by the State of Illinois who are represented by AFSCME Council 31 are covered by a collective bargaining agreement between AFSCME Council 31 and the State of Illinois, Department of Central Management Services. This agreement is often referred to as the master contract. The master contract covers eight different bargaining units.

AFSCME Local 2645 is a local union affiliated with AFSCME Council 31 and consists of AFSCME represented employees employed at Ludeman. These employees are represented in six different AFSCME represented bargaining units and are covered by the master contract. In addition to being covered by the master contract, Local 2645 has a supplemental agreement with

Ludeman that covers terms and conditions of employment specific to Ludeman. Local 2645 has officers who are elected by the membership to perform duties specific to each office. AFSCME Council 31 Staff Representative Dick Crofter is assigned to Local 2645, and among other duties, represents AFSCME Council 31 relative to matters at Ludeman.

Temporary Assignments

The master contract between AFSCME Council 31 and the Employer includes an article entitled Temporary Assignment. This article sets forth the agreement between the parties relating to the Employer's ability to temporarily assign employees to perform the duties of another position classification. The article includes the requirement that a covered employee assigned to a higher pay grade must be paid the higher rate of pay and contains a time limit for temporary assignments that may be extended by mutual agreement. Temporary assignments are made by the Employer. Neither Local 2645 nor AFSCME Council 31 has the ability to authorize a temporary assignment, choose which employee is to be temporarily assigned, or discontinue a temporary assignment. If Local 2645 or AFSCME Council 31 believe a temporary assignment violates the master contract, it can require compliance through the grievance procedure. While an employee is temporarily assigned to a position in a different bargaining unit, he or she is covered by the provisions of the master contract that apply to the temporarily assigned position, rather than the provisions covering his or her permanent position.

At Ludeman, requests to temporarily assign employees are initiated by an employee's department head or supervisor. The department head or supervisor sends an e-mail to Ludeman's Director Glenda Corbett, which is copied to the human resources/labor relations director. The human resources/labor relations director has the responsibility of tracking all temporary assignments. Once an e-mail is sent, the requesting department is supposed to

complete a Temporary Assignment Authorization form, which must be approved and signed by Corbett. The form has not always been consistently used. If the temporary assignment is approved by Corbett, the department head/supervisor then sends an email to the human resources/labor relations director indicating when the temporary assignment starts. Corbett reports that temporary assignments are not supposed to start without her signature. If it is discovered that the proper procedure has not been followed for approving a temporary assignment, the department head/supervisor is directed to complete and send in the Temporary Assignment Authorization form for approval. The department head/supervisor also has the discretion to either keep the employee in the temporary assignment or send him or her back to his or her permanent position.

In 2009 or 2010, AFSCME Council 31 became concerned about the number of temporary assignments that were being extended beyond the time limits in the master contract. As a result, AFSCME Council 31 instituted a procedure to ensure compliance with the contractual time limits. Under this process, all requests for extensions to temporary assignments were to be discussed at the local level and then sent to AFSCME Council 31's Springfield office to be reviewed by AFSCME Council 31's Labor Relations Specialist Ron Pitts.

At Ludeman, Local 2645 Secretary/Treasurer Albert Nelson and the labor relations director meet each month to review the temporary assignments before sending the list of temporarily assigned employees to Pitts. The labor relations director also sends the list to the Employer's central office in Springfield. Regina Jackson was Ludeman's labor relations director until April 1, 2011. Jackson has also been the Acting Assistant Center Director at Ludeman since November 2009. After April 1, 2011, Lee Wesley became Ludeman's acting labor

relations director.[1] At the monthly meetings, Nelson and the labor relations director sometimes check to see if Temporary Assignment Authorization forms have been filled out for each temporary assignment.

Overtime

The master contract also contains an article covering hours of work and overtime. The article sets forth how overtime is to be assigned and states that overtime is to be equalized on a rotating basis. The article goes on to state in relevant part:

> In the event an employee is temporarily assigned to a different classification for a period exceeding five (5) consecutive days, he/she shall be credited with the average number of hours of the employees in that classification in the unit on the effective date of change, for the purpose of overtime distribution.
>
> Upon his/her return to his/her regular position classification, he/she shall be credited with his/her past number of hours plus the credited hours from his/her temporary assignment.

Since at least 2003, Ludeman and AFSCME Local 2645 have had a verbal agreement that an employee temporarily assigned to a position is only allowed to work overtime in that position and may not also work overtime in his or permanent position. There is no formal tracking system to discover when violations of the practice occur however. An employee who is temporarily assigned is supposed to be informed of the overtime verbal agreement at the time he or she is offered the temporary assignment. However, this has not always been consistently done. On occasions when an employee has worked overtime in his or her permanent position and the situation is discovered, the employee is informed of the overtime verbal agreement and is not allowed to work such overtime in the future.

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[1] The Employer did not produce Wesley to testify at the Board hearing and he was not physically present at the hearing. An adverse inference cannot be drawn however because Wesley retired from the Employer prior to the hearing and was no longer under the control and direction of the Employer. Williams v. Commonwealth Edison Co., 232 Ill. App. 3d 85 (1st Dist. 1992); Bd. of Regents of Sangamon State Univ., 6 PERI ¶ 1049 (IL ELRB 1990), aff'd, 208 Ill. App. 3d 220 (4th Dist. 1991).

Charging Party's Temporary Assignment

On or about April 4, 2011, Jones was temporarily assigned from her position as Mental Health Technician II to the position of Activity Therapist. The assignment was requested by Keith Taylor, the Director of Activity and Vocational Services at Ludeman. Although Taylor was aware of the requirement that a Temporary Assignment Authorization form must be completed and signed by the Director for a temporary assignment to be effective, he does not remember whether or not he completed the form for Jones' temporary assignment. Jackson reports that the proper procedure was not followed for Jones' temporary assignment and she never received a Temporary Assignment Authorization form. Corbett also reports that she never received a Temporary Assignment Authorization form for Jones and the proper procedure was not followed. Corbett stated that she could not remember whether she had received any correspondence from Taylor regarding his interest in temporarily assigning the Charging Party.

Jones' first week in her temporary assignment was spent in training. On April 22, 2011, and April 23, 2011, she worked overtime.[2] Jones was also scheduled to work overtime in her permanent position on April 29 and 30, 2011; May 7, 2011; and May 8, 2011. When Jones arrived at work on April 29, 2011, Sherry Pamplin, the Employer's Residential Services Supervisor who assigns overtime, informed Jones that she could not work overtime. Jones asked Pamplin why she was not allowed to work overtime, and Pamplin told her to speak with Paul Cooper, the president of Local 2645 and an employee at Ludeman. Jones reports that she was not aware of the overtime verbal agreement and had never been told that she could not work overtime in her permanent position while being temporarily assigned. Jones asked Cooper why she was not allowed to work overtime and Cooper informed Jones of the overtime verbal

[2] It is not clear from the record whether the overtime Jones worked on these days was as an Activity Therapist, her temporarily assigned position, or as a Mental Health Technician II, her permanent position.

agreement. Jones also asked Lugene Logan, a Local 2645 union steward, to call Alice Bond, a former Local 2645 president, regarding whether there was a verbal agreement regarding overtime.

Pursuant to the parties' procedure to review temporary assignments monthly, Nelson and Wesley met in late April or early May 2011 to review the existing temporary assignments. During that review, they looked at the list of temporary assignments, the start dates, and the Temporary Assignment Authorization forms. During the meeting, they discovered that Wesley had Jones' name on his list, but Nelson did not have Jones' name on his list. Nelson then asked Wesley for Jones' start date or the date listed on the Temporary Assignment Authorization form. Wesley said he did not have the form and he would get back to Nelson. Wesley never got back to Nelson with the form. Nelson reports that this was the only instance he was aware of in which he had requested a Temporary Assignment Authorization form and then never received one.

At some point in April or May 2011, Nelson notified Wesley that Jones was working overtime in her permanent position while being temporarily assigned. Sometime after the April or May, 2011 meetings between Nelson and Wesley, Jones asked Nelson about her ability to work overtime while temporarily assigned. Nelson told Jones about the overtime verbal agreement.

Sometime after, Jones called Crofter and left him a message asking why she had been stopped from working overtime. Jones called him twice but did not receive a return phone call. As a result, Jones went to AFSCME Council 31's office in Homewood, Illinois and complained to Crofter that she had not been allowed to work overtime in her permanent position. Crofter told Jones that he would contact his supervisor, AFSCME Council 31 Associate Director Claudia Roberson, and get back to Jones since it was the first time he had been asked about the issue.

Crofter then contacted Roberson and Roberson told Crofter to grieve the issue since the overtime issue was a "gray area." Around this time, Crofter also spoke with Nelson. Nelson confirmed that he had spoken with Jones and informed her of the verbal agreement regarding overtime.

At some point, Jones also spoke with Roberson regarding the issue. Roberson told Jones that she would speak with Crofter and Crofter would contact Jones. Neither Cooper nor Nelson was aware that Jones had also spoken to Roberson regarding the issue.

In addition to speaking with Roberson, Crofter also spoke with Cooper to inquire about Jones' situation. Cooper informed Crofter that there was a longstanding agreement at Ludeman that overtime is not allowed in an employee's permanent position while being temporarily assigned.

At some point, Corbett became aware that Jones' temporary assignment had not been officially authorized. On or before May 10, 2011, Taylor received a message from Wesley informing him that Jones' temporary assignment was being terminated and she was to be given a five-day notice to return to her unit.

On May 10, 2011, Taylor met with Jones and informed her that her temporary assignment was terminated and that she had five days to return to her unit. Taylor told Jones that he was not in agreement with the termination of her temporary assignment because his unit would be short staffed as a result. While Jones was still in Taylor's office, Taylor telephoned Corbett to inquire about Jones' temporary assignment being terminated. Corbett told Taylor that he would need to speak with Wesley. Taylor then telephoned Wesley by speakerphone while Jones was in the office. While on speakerphone, Wesley stated that Nelson had come to Wesley's office and told

him to give Jones a five-day notice and send her back to her permanent position.[3] Nelson reports that he did not request that Jones' temporary assignment be terminated.

At some point after Jones was informed that her temporary assignment was ending, Crofter called Jones and told her to file a grievance over the overtime verbal agreement.

On May 13, 2011, Jones spoke with Roberson again and informed her that Jones did not know why she was being sent back to her permanent position.

Jones continued to work as an Activity Therapist until May 16, 2011, when she returned to her position as a Mental Health Technician II.

Corbett reports that during her time at Ludeman, she was aware of two other instances in which an employee was found to have been violating the overtime verbal agreement. In one case, the employee, Shanita Digby, was instructed to not work overtime in her permanent position while temporarily assigned. Corbett reports that this employee was however allowed to continue her temporary assignment because the assignment had been properly authorized by Corbett. In the other case, the employee, Eric Parrish, was also instructed to not work overtime in his permanent position while temporarily assigned. Corbett reports that this employee was also allowed to continue his temporary assignment because it had been properly authorized.

Sheelah Payne-Perry is an Account Clerk II and has been an executive board member for Local 2645 since 2004. Payne reports that the length of time of Jones' temporary assignment was shorter than any other temporary assignment that she was aware of while on the board.

On May 20, 2011, Jones filed a grievance to challenge not being allowed to work overtime in her permanent position while being temporarily assigned. The grievance proceeded

[3] The Union asserts that this statement is inadmissible as hearsay. However, Wesley's statement to Taylor is admissible as a statement of a party opponent, the Employer. Nelson's statement to Wesley is also admissible as a statement of party opponent, the Union.

to step three of the parties' grievance procedure and on December 14, 2011, the parties settled the grievance and agreed to pay Jones for the four days of overtime she was not allowed to work.

Jones also filed a grievance over the termination of her temporary assignment. The grievance proceeded to the second step and on October 21, 2011, the parties settled the grievance and agreed to consider Jones in the next temporary assignment rotation. Nelson was present at the step two grievance meeting.

IV. DISCUSSION AND ANALYSIS

A. Section 10(a)(2) and (1) violations

The Employer violated Sections 10(a)(2) and (1) of the Act when it terminated the Charging Party's temporary assignment.

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.[4] To establish a violation of Section 10(a)(2), the charging party must show, by a preponderance of the evidence, that (1) the employee was engaged in protected, concerted or union activity, (2) the employer was aware of the employee's protected activity, (3) the employer took an adverse employment action against the employee, and (4) the employer's

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[4] Section 10 of the Act states in relevant part:

> (a) It shall be an unfair labor practice for an employer or its agents:
> (1) to interfere with, restrain or coerce public employees in the exercise of the rights guaranteed in this Act or to dominate or interfere with the formation; existence or administration of any labor organization or contribute financial or other support to it; provided, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;
> (2) to 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.

action was motivated, in whole or in part, by the employer's animus toward the employee's protected activity. Cook Cnty. v. Ill. Labor Relations Bd., 2012 IL App (1st) 111514 ¶ 25, citing City of Burbank v. Ill. State Labor Relations Bd., 128 Ill. 2d 335, 346 (1989); Pace Suburban Bus Div. of Reg'l Transp. Auth. v. Ill. Labor Relations Bd., 406 Ill. App. 3d 484, 495 (1st Dist. 2010).

1. Prima Facie Case

"Concerted activity" is activity undertaken jointly by two or more employees, or by one employee on behalf of others. Cnty. of Cook (Mgmt. Info. Servs.), 11 PERI ¶ 3012 (IL LLRB 1995). To be protected, concerted activity must be for the purposes of collective bargaining, "other mutual aid or protection," or aimed at improving the wages, terms, and conditions of employment. Id. Public sector labor agencies generally take a broad view as to what constitutes protected activity. Vill. of New Athens, 29 PERI ¶ 27 (IL LRB-SP 2012); Cnty. of Cook, 27 PERI ¶ 57 (IL LRB-SP 2011); Vill. of Bensenville, 10 PERI ¶ 2009 (IL SLRB 1993). "Where it can be shown that the complained-of employer actions directly affect their working conditions, employees are permitted a wide range of protest." Vill. of Bensenville, 10 PERI ¶ 2009.

Here, the Charging Party was engaged in protected, concerted activity when she inquired about and protested the overtime verbal agreement to Pamplin, Cooper, Logan, Bond, Nelson, Crofter, and Roberson. The overtime verbal agreement directly affected the Charging Party's wages, hours, and conditions of employment. In addition, the Charging Party was engaged in union activity when she complained to Local 2645 and AFSCME Council 31 that she had not been allowed to work overtime. The Employer also had knowledge of the protected, concerted and union activity because at least one Employer representative, Pamplin, was aware of Jones' inquiry and protest.

In addition, the Employer took an adverse employment action against the Charging Party because her temporary assignment was terminated. To demonstrate that a changing party has suffered an adverse employment action the employee does not need to show that the action caused adverse tangible results or adverse financial consequences. City of Chi. v. Ill. Local Labor Rel. Bd., 182 Ill. App. 3d 588, 594-95 (1st Dist. 1988). Examples of adverse employment actions include, but are not limited to "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." Ill. Dep't of Cent Mgmt. Servs. (Dep't of Emp't Sec.), 11 PERI ¶ 2022 (IL SLRB 1995). In this case, the termination of Jones' temporary assignment constituted a qualitative change in her terms and conditions of employment because it led to a change in job duties and the termination of the assignment was involuntary. See City of Lake Forest, 29 PERI ¶ 52 (IL LRB-SP 2012); Clerk of the Circuit Court of Winnebago Cnty., 17 PERI ¶ 2038 (IL LRP-SP 2001). Thus, the only remaining element of the prima facie case is whether the Charging Party's protected, concerted and union activity was a substantial or motivating factor in the termination of her temporary assignment.

The Charging Party has shown that her protected, concerted and union activity was a substantial or motivating factor in the termination of her temporary assignment. An employer's unlawful motive may be inferred by direct or circumstantial evidence, including proximity in time between the protected, concerted activity and the adverse action; hostility toward protected, concerted activities; disparate treatment toward employees engaged in protected, concerted activities; and shifting or inconsistent explanations for the adverse action. City of Burbank, 128 Ill. 2d at 345-46.

In this case, the Charging Party initially voiced her complaints regarding the overtime verbal agreement on April 29, 2011. The Charging Party was informed that her temporary assignment was being terminated on May 10, 2011, less than two weeks later. Thus, the timing of the termination supports an inference that the Employer's motive was unlawful.

The record also indicates that the Employer treated the Charging Party differently than other employees not engaged in protected, concerted and union activity. Two other employees, Digby and Parrish, were both found to have violated the overtime verbal agreement and each was allowed to remain in his and her temporary assignment. The Employer asserts however that the Charging Party's situation was sufficiently different than those employees because those employees' temporary assignments were properly authorized while Jones' assignment was not. Nonetheless, this argument is unconvincing because as will be discussed further below, the Employer has shifted its explanation regarding the reason for the termination of Jones' temporary assignment. Further evidence of disparate treatment is the short length of time that Jones spent in her temporary assignment.

The Charging Party has also demonstrated that the Employer had shifting or inconsistent explanations for the termination of her temporary assignment. On the date that the Charging Party's assignment was terminated, the Charging Party was not presented with the reason for the termination. The Employer's Answer to the Complaint stated that the temporary assignment was ended because of information the Employer received from Nelson that Jones was not abiding by the overtime verbal agreement. At hearing, the Employer argued that the reason for the termination of Jones' temporary assignment was that (1) she was violating the overtime verbal agreement and (2) the temporary assignment was not properly authorized. On brief, the Employer argues that her temporary assignment was terminated because her temporary

assignment was never properly authorized, and not because of the violation of the overtime verbal agreement. Thus, the Employer has presented shifting explanations for the termination of Jones' assignment which supports an inference that it acted with an unlawful motive.

In addition, there is nothing in the record to indicate that Taylor was directed to complete and send in the Temporary Assignment Authorization form, per the Employer's practice, after it was discovered that Jones' temporary assignment had not been properly authorized. Further, the Employer's practice of allowing the department head the discretion to either keep the employee in the temporary assignment or send him or her back to their permanent position is not consistent with the fact that Taylor wanted to keep Jones in her temporary assignment. Thus, the Charging Party has met her prima facie case.

2. Legitimate Reason

Once the charging party establishes its prima facie case, the burden shifts to the employer to demonstrate by a preponderance of the evidence that it had a legitimate reason for the adverse employment action and that it would have taken the same action notwithstanding the respondent's unlawful motive. City of Burbank, 128 Ill. 2d at 346. However, merely proffering a legitimate business reason for the adverse action will not satisfy an employer'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.

Here, the Employer asserts that it had a legitimate business reason to terminate Jones' temporary assignment because the temporary assignment was not properly authorized. However, the Employer has failed to establish that this reason was actually relied upon. The Employer's reason for terminating Jones' temporary assignment is subject to the same finding of shifting

explanations and inconsistent reasons described earlier. Thus, the Employer failed to provide a legitimate business reason. In sum, the Employer violated Sections 10(a)(2) and (1) of the Act when it terminated the Charging Party's temporary assignment.

B. Section 10(b)(3) violation

Before examining whether Nelson's alleged request to terminate the Charging Party's temporary assignment was a violation of Section 10(b)(3), it must first be determined whether Nelson was an agent of the Union. Whether an individual acts as an agent of a union is determined by common law rules of agency and an examination of the circumstances of each case as to whether that individual could be said to have acted with the express or implied authority of the union. City of Chi. & Chi. Typographical Union, Local 1, 10 PERI ¶ 3021 (IL LLRB 1994), citing NLRB v. Plasterers & Cement Masons, Local 90 (S. Ill. Builders Ass'n), 606 F.2d 189 (7th Cir. 1979); Vill. of Carol Stream, 9 PERI ¶ 2008 (IL SLRB 1993). The holding of union elective office is persuasive and substantial evidence that the officer is an agent of the union absent compelling contrary evidence. Penn Yan Express, 274 NLRB 449 (1985), citing Elec. Workers IBEW Local 453 (Nat'l Elec.), 258 NLRB 1427 (1981); Serv. Emps. Local 9 (Blumenfeld Enters.), 290 NLRB 1 (1988).

In this case, Nelson was the Secretary/Treasurer of Local 2645 and thus held elective office in the Union. In addition, Nelson met on a monthly basis as the representative for the Union at meetings with management regarding temporary assignments. Thus, Nelson was acting as an agent of the Union.

Section 10(b)(3) of the Act prohibits a labor organization or its agents from causing or attempting to cause "an employer to discriminate against an employee in violation of subsection

(a)(2)."[5] Section 10(b)(3) of the Act tracks the language in Section 8(b)(2) of the National Labor Relations Act (NLRA), which prohibits discrimination based on the exercise of employee rights which tends to encourage or discourage union membership. A union commits an unfair labor practice under Section 8(b)(2) of the NLRA when it causes or attempts to cause an employer to discriminate in order to retaliate against an employee for protesting the union's policies, questioning the official conduct of union agents, or incurring the personal hostility of a union official. Radio Officers v. NLRB, 347 US 17 (1954). In General Motors Corp., 272 NLRB 705 (1984), enforced sub nom. Auto Workers Local 594 v. NLRB, 776 F. 2d (6th Cir. 1985), the National Labor Relations Board held that a union had unlawfully caused the employer to change an employee's starting time to retaliate against the employee for opposing a new absenteeism program that was supported by the union, in violation of Section 8(b)(2).

The NLRB analyzes Section 8(b)(2) claims according to the framework set forth in Wright Line. Int'l Union of Operating Engineers, Local 627, 359 NLRB No. 91, 2013 WL 1686302 (NLRB), citing Wright Line, a Div. of Wright Line, Inc., 251 NLRB 1083 (1980). Under Wright Line, a charging party must establish that (1) he or she engaged in protected activity; (2) the union had knowledge of that activity; and (3) animus or hostility toward the activity was a motivating factor in the union's decision to take the adverse action against the charging party. Wright Line, 251 NLRB 1083. If the charging party makes the required initial

[5] The Union asserts that before a 10(b)(3) violation can be found, the charging party must first establish a Section 10(a)(2) violation. The Board has upheld dismissals which make this assertion. Ill. State Toll Highway Auth., 9 PERI ¶ 2005 (IL LRB-SP 1993); Amalgamated Transit Union, Local 241 (Bradley), 8 PERI ¶ 2024 (IL LRB-SP 1992).

showing, the burden then shifts to the union to prove that it would have taken the same action even in the absence of the employee's protected activity.[6] Id.

In this case, the Charging Party has failed to establish that the Union violated Section 10(b)(3) when Nelson allegedly requested that the Charging Party's temporary assignment be rescinded. The Charging Party engaged in protected activity when she complained and inquired about the overtime agreement to Cooper, Logan, Bond, Nelson, Crofter, and Roberson. Nelson had knowledge of the Charging Party's complaints to, at least, Cooper and Crofter. The timing of the removal of the temporary assignment is suspicious since it occurred less than two weeks after the Charging Party made her first protest and inquiry regarding the policy. The Charging Party however has failed to establish further evidence of unlawful motive by the Union, and timing alone, without supporting proof to suggest that a respondent had an unlawful motive, is insufficient to establish a violation of the Act. Vill. of McCook, 25 PERI ¶ 75 (IL LRB-SP 2009); Ill. Dep't of Cent. Mgmt. Servs. (Dep't of Corrections), 18 PERI ¶ 2059 (IL LRB-SP 2002); City of Chi. (Dep't of Streets & Sanitation), 6 PERI ¶ 3020 (IL LLRB 1990). Vill. of McCook, 25 PERI ¶ 75. In addition, the Charging Party has failed to establish that Nelson actually requested that her temporary assignment be removed. The Charging Party bases her allegation on the May 10, 2011 conversation with Taylor and Wesley, in which Wesley stated that Nelson had come to Wesley's office and told him to give Jones a five-day notice and send her back to her permanent position. However, Nelson credibly testified that he never made such a request. Thus, the Charging Party has failed to show that the Union violated Section 10(b)(3) of the Act.

[6] The Illinois Labor Relations Board has not officially adopted this test. The only Board case which has found a violation of Section 10(b)(3) does not discuss the Wright Line test. See City of Chi. & Chicago Typographical Union, Local 1, 10 PERI ¶ 3021.

V. CONCLUSIONS OF LAW

Respondent, State of Illinois, Department of Human Services, violated Sections 10(a)(2) and (1) of the Act when it terminated the Charging Party's temporary assignment.

Respondent, American Federation of State, County and Municipal Employees, Council 31, did not violate Section 10(b)(3) of the Act.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the complaint issued in Case No. S-CB-12-009 be dismissed in its entirety. IT IS HEREBY ORDERED that the Respondent, State of Illinois, Department of Human Services, its officers and agents shall:

1. Cease and desist from:

a. interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them under the Act, by terminating their temporary assignments in retaliation for their exercise of such rights;

b. in any like or related manner, interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them under the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

a. make the Charging Party whole for all losses she incurred as a result of the termination of her temporary assignment;

b. preserve, and upon request, make available to the Board or its agents for examination and copying, all records, reports, and other documents necessary to analyze the amount of back pay due under the terms of this decision;

c. post, for 90 consecutive days, at all times where notices to employees of the State of Illinois, Department of Human Services are regularly posted, signed copies of the attached notice.

Respondent shall take reasonable steps to insure that the notices are not altered, defaced, or covered by any other material.

3. Notify the Board, in writing, within 20 days of the date of this order, of the steps that Respondent State of Illinois has taken to comply herewith.

VII. EXCEPTIONS

Pursuant 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. 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 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 on this 5th day of August, 2014.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Michelle N. Owen
Administrative Law Judge

NOTICE TO EMPLOYEES

FROM THE
ILLINOIS LABOR RELATIONS BOARD

The Illinois Labor Relations Board, State Panel, has found that the State of Illinois, Department of Human Services has violated the Illinois Public Labor Relations Act and has ordered us to post this Notice. We hereby notify you that the Illinois Public Labor Relations Act (Act) gives you, as an employee, these rights:

To engage in self-organization.
To form, join or assist unions.
To bargain collectively through a representative of your own choosing.
To act together with other employees to bargain collectively or for other mutual aid or protection.
And, if you wish, not to do any of these things.

Accordingly, we assure you that:

WE WILL cease and desist from retaliating against Levita Jones, or any employees, for engaging in union or protected, concerted activity.

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

WE WILL make Levita Jones whole for all losses incurred as a result of the termination of her temporary assignment.

WE WILL preserve, and upon request, make available to the Board or its agents for examination and copying all records, reports and other documents necessary to analyze the relief due under the terms of this decision.

This notice shall remain posted for 90 consecutive days at all places where notices to employees are regularly posted.

Date of Posting	State of Illinois, Department of Human Services (Employer)

ILLINOIS LABOR RELATIONS BOARD

320 West Washington, Suite 500
Springfield, Illinois 62701
(217) 785-3155

160 North LaSalle Street, Suite S-400
Chicago, Illinois 60601-3103
(312) 793-6400

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED.