IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

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ETHICS COMMISSION

JAMES A. WRIGHT, in his capacity as EXECUTIVE INSPECTOR GENERAL for AGENCIES OF THE GOVERNOR, State Of Illinois, Petitioner,	)	
v.	)	No. 10-EEC-016
NADA ALSTON, Respondent.	)	

DECISION

This cause is before the Executive Ethics Commission ("Commission") following an evidentiary hearing. This decision will also serve as the Commission's final administrative decision in this matter.

Petitioner filed a verified complaint with the Commission on April 29, 2010. Respondent filed no objections to the complaint and on July 15, 2010, the Commission determined that the complaint was sufficient to proceed.

An evidentiary hearing was conducted on September 8, 2010 at which petitioner was represented by Assistant Attorneys General Joanna Gunderson and Scott Sievers. Respondent was represented by Scott D. Miller.

FINDINGS OF FACT

A copy of the record of proceedings has been reviewed by the members of the Executive Ethics Commission. Based upon this record, the Commission makes the following findings of fact:

1. Respondent Nada Alston has been employed by the Illinois Department of Human Services as Human Services Caseworker since 1999. (Tr. 6-8).

2. During the months of June 2008 to November 2008, respondent was active in the presidential campaign of Barack Obama. As part of her campaign work, she received and distributed politically partisan campaign buttons and t-shirts that contained language supporting Obama's candidacy. (Tr. 10-12).

3. Respondent sometimes had extra t-shirts and buttons from her campaign work and would wear them to the office. (Tr. 11). Some coworkers asked her for t-shirts and buttons and respondent recalled giving away Obama t-shirts on two occasions and an Obama button on at least one occasion, but possibly as many as ten occasions. (Tr. 14-16, 19-22).

4. Sometime during the time while Barack Obama was the Democratic candidate for President of the United States, respondent's coworker, Carolyn Lind (then Stutts), asked respondent for an Obama button. (Tr. 27-28). Respondent told Lind to stop by respondent's desk and she would give her a button. (Tr. 27).

5. Lind later went to respondent's desk and respondent handed her a button with a picture of Obama. (Tr. 28-29). Respondent was reading in her cubicle at that time and was on break. (Tr. 77).

6. Respondent's regular work hours are 8:30 a.m. to 4:45 p.m. She takes a 45-minute lunch, scheduled for 12:00 to 12:45 p.m., and receives two 15-minute breaks.

7. It appears that respondent distributed a number of political buttons and t-shirts in the workplace, but, with the one exception noted above, respondent testified that she distributed these before work or during her lunch period. No evidence was presented to contradict this testimony.

CONCLUSIONS OF LAW

1. Respondent Nada Alston was at all times relevant to this complaint a State employee, as "employee" is defined in the State Officials and Employees Ethics Act ("Act") to include regular employees and appointees. 5 ILCS 430/1-5.

2. The Executive Ethics Commission has jurisdiction over respondent in the matter of her alleged performance of prohibited political activity during compensated time and misappropriation of State property or resources to engage in prohibited political activity. (5 ILCS 430/5-15(a)).

3. "Prohibited political activity" means, among other things, "(11) Distributing, preparing for distribution, or mailing campaign literature, campaign signs, or other campaign material on behalf of any candidate for elective office or for or against any referendum question." 5 ILCS 430/1-5.

4. "Prohibited political activity" means, among other things, "(12) Campaigning for any elective office or for or against any referendum question." 5 ILCS 430/1-5.

5. "Campaign for elective office" is defined as "any activity in furtherance of an effort to influence the selection, nomination, election or appointment of any individual to any federal, State, or local public office…" 5 ILCS 430/1-5.

6. "Compensated time" is defined as "any time worked by or credited to a State employee that counts toward any minimum work time requirement imposed as a condition of employment with a State agency, but does not include any designated State holidays or any period when the employee is on a leave of absence." 5 ILCS 430/1-5.

7. Respondent is compensated for 7½ hour days, exclusive of lunch, but including two 15-minute breaks. (Respondent's Exhibit #1).

8. Section 5-15(a) of the State Officials and Employees Ethics Act provides, in part: "State employees shall not intentionally perform any prohibited political activity during any compensated time (other than vacation, personal, or compensatory time off). 5 ILCS 430/5-15(a).

9. In all proceedings before the Commission, the standard of proof is by a preponderance of the evidence. 5 ILCS 430/20-50(k).

10. Petitioner has proven by a preponderance of the evidence that respondent intentionally performed prohibited political activity during compensated time when she distributed an Obama campaign button to Carolyn Lind.

11. Respondent has violated Section 5-15(a) of the State Officials and Employees Ethics Act. 5 ILCS 430/5-15(a).

12. The Executive Ethics Commission may levy an administrative fine of up to $5,000 for a violation of the State Officials and Employees Ethics Act. 5 ILCS 430/50-5(e).

ANALYSIS

The State Officials and Employees Ethics Act prohibits employees from intentionally engaging in prohibited political activity during compensated time and from intentionally misappropriating State property and resources by engaging in prohibited political activity. 5 ILCS 430/5-15(a).

During the 2008 election season, Nada Alston engaged in political activity by distributing a number of political buttons and t-shirts to coworkers in her State office building. The mere fact that she engaged in this activity while on State property does not constitute a violation of the Act. Instead, petitioner must prove by a preponderance of the evidence that she misappropriated State property or resources by engaging in it, or that she performed the prohibited political activity during compensated time.

At the time in question, respondent worked and was compensated for the standard 37 ½ hour work week, which did not include a lunch period, but did include two 15-minute breaks. During one of these breaks, respondent gave a political button to a coworker, thereby intentionally engaging in prohibited political activity during compensated time.

From the testimony at hearing, it appears that respondent engaged in a significant amount of political activity in the workplace. She distributed political t-shirts and buttons to her coworkers and she and others wore political t-shirts and buttons in the workplace.

While current law permits this activity outside compensated time, such as before and after work and during uncompensated lunch periods, engaging in any political activity in the workplace at

any time, is an unwise practice. First, the temptation to engage in this activity while "on the clock" and justify it as an insignificant matter is too great. Second, and more important, engaging in political activity at the workplace sends the wrong message to coworkers and the public. It creates an appearance that employees are less interested in being public servants and more interested in playing political games.

WHEREFORE, for the foregoing reasons, the Commission finds that respondent Nada Alston violated Section 5-15(a) of the State Officials and Employees Ethics Act (5 ILCS 430/5-15(a)).

IT IS FURTHER ORDERED that an administrative fine of $250.00 is levied against respondent Nada Alston in accordance with her violation of Section 5-15(a) of the State Officials and Employees Ethics Act (5 ILCS 430/5-15(a)).

IT IS FURTHER ORDERED that petitioner's motion to amend verified complaint by interlineations and motion to withdraw request for discipline are granted.

This is a final administrative decision and subject to the Administrative Review Law.

ENTERED: December 15, 2010