STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

American Federation of State, County and Municipal Employees, Council 31,	)	
Charging Party,	)	
and	)	Case No. S-CA-21-069
CGH Medical Center,	)	
Respondent.	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On January 26, 2021, the American Federation of State, County and Municipal Employees, Council 31, (Charging Party or Union) filed a charge with the Illinois Labor Relations Board's State Panel (Board) alleging that the CGH Medical Center (Respondent) engaged in unfair labor practices within the meaning of Sections 10(a)(8) and (1) of the Illinois Public Labor Relations Act (Act) 5 ILCS 315 (2019), as amended. The charge was investigated in accordance with Section 11 of the Act. On June 30, 2021, the Board's Executive Director issued a Complaint for Hearing.

The parties agreed to proceed on a stipulated record. They filed timely post-hearing briefs. After full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of the case, I recommend the following:

I. PRELIMINARY FINDINGS[1]

The parties stipulate, and I find that:

1. The Respondent, CGH Medical Center, is a public employer within the meaning of Section 3(o) of the Illinois Public Labor Relations Act.
2. The Respondent is subject to the jurisdiction of the Board's State Panel pursuant to Section 5(a-5) of the Act.

[1] The parties proceeded on a stipulated record and the remaining stipulated facts are incorporated into the findings of fact. The parties' disputes regarding the admissibility of certain exhibits and proposed testimony are addressed in the body of this decision.

3. The Union, American Federation of State, County and Municipal Employees, Council 31, is a labor organization within the meaning of Section 3(i) of the Act.
4. On December 5, 2019, the Union filed a majority interest petition with the Board in Case Number S-RC-20-030 seeking to represent a unit of employees of the Respondent.
5. On April 26, 2021, in Case Number S-RC-20-030, the Union was certified as the exclusive representative of a unit of employees of the Respondent.

II. ISSUES AND CONTENTIONS

The issue is whether the Respondent violated Sections 10(a)(8) and (1) of the Act when the Respondent's CEO posted a document, entitled "letter to the editor," on the Respondent's website and maintained the posting through July 6, 2021.

The Union argues that the Respondent's letter violated Section 10(a)(8) of the Act because it deterred or discouraged employees from becoming dues-paying union members or authorizing representation by the union, and also interfered with, restrained, or coerced employees' decisions on such matters. The Union reasons that the letter had this effect because it disparaged the Union, informed employees that unionization would destroy their relationship with the Respondent, encouraged employees to file complaints against the Union with the Illinois Department of Labor, advised employees that it was not too late to revoke their authorization cards while providing instructions on how to do so, and encouraged employees to inform the Respondent of their desire to revoke their authorization cards/union membership.

The Union further argues that the Respondent violated Section 10(a)(8) of the Act in a different respect when it maintained the letter on its website after the Board certified the Union as the employees' collective bargaining representative on April 26, 2021. The Union notes that the Act requires employers to direct all questions about dues revocation to the exclusive representative and prohibits an employer from otherwise interfering with the relationship between employees and their exclusive bargaining representation. The Union argues that the Respondent contravened this requirement as of April 26, 2021, by maintaining the posting that contained the statements discussed above, and also by encouraging employees to submit their inquiries about union membership to the Respondent rather than directing them to the Union.

The Union, anticipating the Respondent's defenses, denies that the charge is untimely filed. The Union contends that the Respondent's conduct qualifies as a continuing violation, reasoning that each day that the Respondent maintained the posting on its website constituted a repeated violation of the Act. The Union also emphasizes that the complaint covers rights and obligations that took effect when the Union became the exclusive representative on April 26, 2021, many months after the Respondent first posted its letter and after the Union filed its charge.

The Respondent initially asserts that the Union's charge is untimely filed. It argues that the Union had reason to know of the CEO's letter when the Respondent posted it, outside the limitations period, because it appeared on the Respondent's website and in a newspaper, published in print and online. The Respondent additionally argues that the alleged misconduct does not qualify as a continuing violation because the complained of conduct within the limitations period is identical to conduct outside the limitations period, without any new actions by the Respondent.

On the merits, the Respondent argues that the statements within the letter were lawful. The Respondent argues that it was entitled to provide employees with instructions on how to revoke their authorization cards because employees made inquiries to the Respondent on that subject. The Respondent contends that the letter's comments about the Union are protected under Section 10(c) of the Act because they do not contain any threat of reprisal or force or promise of benefit. In addition, the Respondent argues that, when viewed in context, the letter's statements simply respond to and correct perceived misinformation disseminated by the Union, news outlets, and social media.

III. FINDINGS OF FACT

In June 2019, employees at CGH Medical Center began organizing to obtain union representation.

On June 10, 2019, Dr. Paul Steinke, CGH President and CEO, sent an email to all CGH staff (CGH – All Users) with the subject "Union Activity Information." Steinke informed employees that he had learned that AFSCME had come to visit employees' houses. He stated that employees were not required to speak to AFSCME representatives and that if they felt threatened, harassed, or intimidated, they should call the police. Steinke also informed employees that "when you sign the card, that is your first, last and only "vote" as in a municipality, there is no formal "vote"….Once the card is signed, that's it." Steinke stated that the Respondent had received

reports from employees that they were told to sign cards simply as proof that the Union had visited, and that if employees had "experienced similar concerns," they could file a formal complaint with the Board. He concluded by stating the following: "CGH is dedicated to continuing an open relationship with all of our staff. My opinion is that this relationship would be hindered by a third-party interpreting issues and has the potential to create another barrier. We strive to provide employees with fair treatment, as well as competitive salaries and comprehensive benefits. We prefer to continue our open-door policy and dealing directly with you – our most valuable asset. My belief is that remaining union free helps us continue our caring tradition."[2]

In July 2019, the Sterling Daily Gazette, a local newspaper in Sterling, published two articles by Lindsey Salvatelli. The article published on July 23, 2019, was entitled, "Supporters flood council chambers for union talks." It included a quote from then-CGH Employee Linda Bell stating that a union at CGH would improve staffing. The other article, published on July 25, 2019, was entitled "City, union clash over door-to-door visits." In most relevant part, it reported on complaints that an organization was going to peoples' homes and claiming that CGH was misspending tax dollars. [3]

In the July-August 2019 edition of "On the Move" (No. 189), the Union published an article titled "CGH Medical Center employees hope to join AFSCME." The article quoted the Union's Organizing Director, Abby Davis, who stated that the Respondent was trying to create a "culture of fear." It also included expressed concerns from CGH employees about staffing levels and high turnover.

On September 19, 2019, the Union posted a tweet stating that workers at CGH Medical Center were "facing retaliation from management as they seek to organize a union with AFSCME."[4]

On December 5, 2019, the Union filed a majority interest petition with the Board in Case Number S-RC-20-030 seeking to represent a unit of employees of the Respondent.

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[2] This document is admitted into evidence to provide relevant background, to permit discussion of the parties' respective arguments, and to allow full review by the Board, if necessary.

[3] These newspaper articles are admitted into evidence to provide relevant background and to permit discussion of the parties' respective arguments. However, the newspaper articles are not admitted for the truth of the matter asserted.

[4] This tweet is admitted into evidence to provide relevant background and to permit discussion of the parties' respective arguments.

On December 10, 2019, the Sterling Daily Gazette published an article by Cody Cutter of Sauk Valley Media titled "CGH workers union formation nears fruition." It reported that CGH employees wanted union representation because they were concerned about the high number of patients per nurse and high staff turnover.[5]

On December 13, 2019, Sandi Baylor-Schmidt, CGH Human Resources Director, sent an email to all CGH employees with the subject "Follow-Up Q&A." In most relevant part, the letter informed employees that they could revoke their authorization cards and instructed them on how they could do so. The instructions provided a link to a sample revocation letter, the address to which they should send it, and directed employees to send the letter via certified mail so that they would have a record of delivery. The email further noted that "it is also a good idea to send a copy of the letter to HR for your file."[6]

If called as a witness on behalf of the Respondent at the hearing in this case, Sandi Baylor-Schmidt would testify that she is, and in December 2019 was, the CGH Human Resources Director; that, on or about December 14, 2019, she received copies of such letters from Michelle Daehler, Miranda Daugherty, and Alex Schmidt, and that, at or around this time, CGH management had received verbal inquiries from certain of its employees regarding how they could revoke union authorization cards they had signed and how the Union had obtained their home addresses and personal telephone numbers.[7]

On December 18, 2019, a document entitled "Letter to the Editor, CGH Union Not a Certainty, By Dr. Paul Steinke, CGH President and CEO," was published as an advertisement in the Sterling Daily Gazette and at www.saukvalley.com.

On December 18, 2019, a document entitled "Letter to the Editor, CGH Union Not a Certainty, By Dr. Paul Steinke, CGH President and CEO," was posted on the Respondent's website. It had the same content as the document published in the Sterling Daily Gazette on the same date, but without reference to the Sterling Daily Gazette or www.saukvalley.com.

[5] This newspaper article is admitted into evidence to provide relevant background and to permit discussion of the parties' respective arguments. It is not admitted for the truth of the matter asserted.
[6] This document admitted into evidence to provide relevant background and to permit discussion of the parties' respective arguments.
[7] Both the testimony and the letters are admitted into evidence to allow a full discussion of the issues, but they are given little weight on the issue for which they are offered, as explained in the discussion section of this RDO.

The letter stated that it was written "in response to an article published on December 10, 2019 by Sauk Valley Media…[and] also information recently released on social media, other news outlets, and in baseless AFSCME labor complaints and visits to the Sterling City Council meetings."

The letter, in part, addressed published complaints about staffing at CGH Medical Center, noting that its staffing ratios were the best in the nation. It also addressed published assertions regarding CGH Medical Center's alleged misuse of tax dollars, asserting that CGH Medical Center is not taxpayer funded. The letter additionally denied published claims that CGH Medical Center had created a culture of fear, noting that it had not used scare tactics and had kept its promise to remain neutral.

However, Steinke's letter also asserted that "the union has a highly paid attorney (paid by the employees' union dues) to bombard employers and file baseless labor disputes in an attempt to wear them down into submission." He additionally asserted that "unionization could hinder or destroy [employees'] close relationship" with management.

Steinke concluded his letter with the following language, highlighted in blue font:

> ***If you feel you have been unduly harassed or have been/are being pressured by any representative of AFSCME, union organizer, or a coworker,*** please contact the Illinois Department of Labor at (217) 785-3155 and file a formal complaint. In addition, contrary to what some employees have been told by AFSCME representatives, it is not too late to change your mind if you already signed a card. To revoke your card and signature:
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> - Send a letter via certified mail so you have proof of delivery revoking your signature.
> - It is also a good idea to send a copy of the letter to HR for your file.
> - For a sample letter, follow this link and fill in the correct information - https://nrtw.org/sample-cardcheck-revocation
> - The address and contact to send it to are as follows: David Delrose, Secretary AFSCME Council 31, 205 N. Michigan Ave Suite 2100, Chicago, IL 60601
>
> If you have any questions or concerns, please contact me or the CGH Human Resources Department at (815) 625-0400 ext. 5797.

On January 26, 2021, the Union filed its charge against the Respondent in this case, and on June 30, 2021, the Board's Executive Director issued a Complaint for Hearing.

On April 26, 2021, the Board's Executive Director certified the Union as the exclusive representative of a unit of the Respondent's employees. The Executive Director issued a Corrected Certification of Representative on September 9, 2021, *nunc pro tunc* April 26, 2021.

The document entitled "Letter to the Editor, CGH Union Not a Certainty, By Dr. Paul Steinke, CGH President and CEO," remained on the Respondent's website until July 6, 2021.

IV. DISCUSSION AND ANALYSIS

1. Timeliness

The Union's charge is timely filed.

Section 11 of the Act provides that, whenever an unfair labor practice is charged, "the Board…shall conduct an investigation of the charge provided that no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of a charge with the Board." 5 ILCS 315/11(a). The six-month filing period begins to run "when the charging party learns or has notice of the actions which constitute the alleged unfair labor practice." Chicago Joint Board, Local 200 v. Illinois Labor Relations Board, 2011 IL App (1st) 101497, ¶ 22; Michels v. Illinois Labor Relations Bd., 2012 IL App (4th) 110612, ¶ 38; Moore v. Illinois State Labor Relations Bd., 206 Ill. App. 3d 327, 335 (4th Dist. 1990). The Respondent has the burden of proving by a preponderance of the evidence that the charge was untimely, i.e., filed more than six months after the Charging Party knew or reasonably should have known of the alleged unlawful conduct. State of Illinois, Department of Central Management Services (Department of Transportation), 29 PERI ¶ 124 (IL LRB-SP 2013); County of Cook, 4 PERI ¶ 3012 (IL LLRB 1988).

As discussed below, there is insufficient evidence that the Union knew or should have known of the Respondent's Letter to the Editor ("letter") at any time before July 26, 2020, a date six months prior to the charge's filing date of January 26, 2020. On this stipulated record, there is no evidence that the Union had actual knowledge of the letter before July 26, 2020. While the Respondent first posted the letter on its website December 18, 2019, and also published it in a local newspaper that day, there is no evidence that any Union agent saw the letter in any form prior to July 26, 2020 or received word of it. Indeed, the record is silent as to how the Union first became aware of the letter.

There is also insufficient evidence that the Union should have been aware of the letter's existence prior to July 26, 2020. Indeed, the Respondent has not demonstrated that the Union had an obligation to monitor the Respondent's website in the exercise of reasonable diligence, such that it should have known of the letter prior to that date. Contrary to the Respondent's suggestion, the Gazette's publication of Steinke's letter on December 18, 2019 has no bearing on the timeliness of the Union's charge absent evidence that the letter remained posted there after Section 10(a)(8) of the Act became law on December 20, 2019. In the alternative, there is no evidence that the Union had any obligation to monitor the Sterling Daily Gazette in the exercise of reasonable diligence.

The cases cited by the Respondent in support of its timeliness defense are distinguishable because they concern alleged unilateral changes imposed on a unionized workforce, where the union's notice of the alleged unlawful conduct was deemed clear. Cf. Village of Skokie, 32 PERI ¶ 6 (IL LRB-SP 2014); cf. City of Sparta, 35 PERI 72 (IL LRB-SP 2018). For example, in Village of Skokie, the Board dismissed a union's unilateral change allegation as untimely filed where the union, through its Union President, received notice of the change via email outside the limitations period. Village of Skokie, 32 PERI ¶ 6. Likewise, in City of Sparta, the Board affirmed dismissal of a union's unilateral change allegation as untimely filed where the respondent had issued numerous work-place memos on the subject, outside the limitations period, and where the Union had allowed them to take effect without dispute. City of Sparta, 35 PERI 72 (union merely contended that it had not been given opportunity to review and respond to earlier memos, presumably before they took effect). Here, by contrast, the Respondent's alleged unlawful conduct concerns statements in a letter directed to yet-unrepresented employees, and the Respondent failed to show that the Union knew or should have known of the letter outside the limitations period.

Finally, the Respondent's attempt to impute employees' knowledge of the website posting to the Union must be rejected absent further evidence and citation to case law demonstrating that such imputation is appropriate, whether on the basis of agency or otherwise. The Board has recognized that even employees who are primary organizers for the union are not necessarily union agents. Vill. of Carol Stream, 9 PERI ¶ 2008 (IL SLRB 1993) (considering a union's liability for employee misconduct). And even after a union becomes the employees' exclusive bargaining representative, an employee's knowledge of the occurrence of an unfair labor practice is not

automatically imputed to the employee's labor organization. See Stone Boat Yard v. NLRB, 715 F.2d 441, 445 (9th Cir.1983).

Thus, the Union's charge is timely filed, and it is unnecessary to consider whether the Respondent's decision to maintain the posting on its website constitutes a continuing violation for each day it remained posted.[8]

2. The Merits

The Respondent violated Section 10(a)(8) and (1) of the Act when it maintained Steinke's letter on its website after the amendments to Section 10(a) of the Act became law on December 20, 2019.

On December 20, 2019, the governor signed legislation amending Section 10(a) of the Act in two key respects, relevant to this case. The amendments defined a new unfair labor practice under Section 10(a)(8), which states in relevant part that it shall be an unfair labor practice for an employer or its agents:

> to interfere with, restrain, coerce, deter, or discourage public employees or applicants to be public employees from: (i) becoming or remaining members of a labor organization; (ii) authorizing representation by a labor organization; or (iii) authorizing dues or fee deductions to a labor organization….

The amendments also added Section 10(d) to the Act's unfair labor practices provision, which states the following:

> (d) The employer shall not discourage public employees or applicants to be public employees from becoming or remaining union members or authorizing dues deductions, and shall not otherwise interfere with the relationship between

[8] If the Board were to reach the continuing violation theory, I would recommend that it apply here. The posted letter at issue here is akin to the maintenance of a discriminatory work rule, to which the continuing violation would apply, because the letter has a coercive impact that continues to chill employees' exercise of protected rights each day it remains posted. See RDO discussion, infra; In Re Eagle-Picher Indus., Inc., 331 NLRB 169 n. 7 (2000) (addressing timeliness); see also Lafayette Park Hotel, 326 NLRB 824, 825 (1998) ("where rules are likely to have a chilling effect on Section 7 rights, the Board may conclude that their maintenance is an unfair labor practice, even absent evidence of enforcement") enfd. 203 F. 3d. 52 (D.C. Cir. 1999). Contrary to the Respondent's assertion, the letter's maintenance is dissimilar to a unilateral change, to which the continuing violation theory would not apply, because the maintenance of a unilateral change has no impact on employees' exercise of Section 6 rights apart from the change's implementation. Elmhurst Park District, 18 PERI ¶2065 (IL LRB-SP 2002) (declining to apply continuing violation doctrine to unilateral change); see also Vill. of Wilmette, 20 PERI ¶ 85 (IL LRB-SP 2004)(same) citing Wapella Education Ass'n v. Ill. Educ. Labor Rel. Bd., 177 Ill. App. 3d 153 (4th Dist. 1988).

> employees and their exclusive bargaining representative. The employer shall refer all inquiries about union membership to the exclusive bargaining representative, except that the employer may communicate with employees regarding payroll processes and procedures.

Section 10(c) of the Act remained unchanged, and states, that "the expressing of any views, argument, or opinion or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit." 5 ILCS 315/10(c).

This is a case of first impression and therefore presents a threshold issue concerning the appropriate analytical framework for cases arising under Section 10(a)(8) of the Act. Here, it is appropriate to apply an objective standard, similar to that used in cases arising under Section 10(a)(1) of the Act. Under Section 10(a)(1) of the Act, the Board considers whether the Respondent's conduct, when viewed objectively from the employees' standpoint, had a reasonable tendency to interfere with, restrain or coerce employees in the exercise of rights protected by the Act. Village of Maywood (Police Department), 29 PERI ¶ 127 (IL LRB-SP 2013); Vill. of Calumet Park, 22 PERI ¶ 23 (IL LRB-SP 2006); Cnty. of Woodford, 14 PERI ¶ 2017 (IL SLRB 1998); City of Mattoon, 11 PERI ¶ 2016 (IL SLRB 1995). There is no requirement of proof that the employees were actually coerced or that the employer intended to coerce the employees. Vill. of Calumet Park, 22 PERI ¶ 23. This objective standard translates well to the Section 10(a)(8) context because the inquiry under Section 10(a)(8) similarly concerns the likely impact of the Respondent's statements and conduct on employees' free exercise of their protected statutory rights.

This case likewise raises threshold questions concerning statutory interpretation, specifically the scope of Section 10(a)(8) of the Act and the extent to which Section 10(c) of the Act protects speech that may conceivably fall within the scope of Section 10(a)(8). The fundamental rule of statutory interpretation is to ascertain and give effect to the legislature's intent, and the best indicator of that intent is the statutory language, given its plain and ordinary meaning. Corbett v. County of Lake, 2017 IL 121536, ¶ 30. A material change in a statute by amendment creates a presumption that the legislature intended to change the law. DeGrand v. Motors Ins. Corp., 146 Ill. 2d 521, 531 (1992). Amendments are to be construed together and with the original act to which they relate as constituting one law and as part of a coherent system of legislation.

Follett's Illinois Book & Supply Store, Inc. v. Isaacs, 27 Ill. 2d 600, 606 (1963). Furthermore, every clause of a statute must be given a reasonable meaning, if possible, and should not be rendered meaningless or superfluous. People v. Stoecker, 2014 IL 115756, ¶ 25.

Here, the plain language of Section 10(a)(8) of the Act demonstrates the legislature's intent to give greater protection to employees' free choice to become and remain union members and to authorize union representation and dues deduction. The rights listed under Section 10(a)(8) were protected before its enactment, under Section 10(a)(1) of the Act, but the extent of that protection is greater under the new amendment. While Section 10(a)(1) of the Act broadly prohibits an employer or its agents from interfering with, restraining, or coercing public employees in the exercise of the rights guaranteed in the Act, Section 10(a)(8) of the Act sets apart protected activities related to union membership, union authorization, and dues deduction. Compare 5 ILCS 315/10(a)(1) and 10(a)(8). As to these rights, Section 10(a)(8) differs from Section 10(a)(1) of the Act in key respects. Although Section 10(a)(8) reiterates the Section 10(a)(1) prohibition against interference, restraint, and coercion of employees in the exercise of the listed protected rights, it additionally specifies that an employer is prohibited from even deterring or discouraging employees' free choice of union membership, union authorization, and dues deduction.

Section 10(a)(8) of the Act must also be interpreted alongside Section 10(c), the Act's free speech provision, which the legislature left unchanged. These two provisions can and should be read consistently with each other under principles of statutory interpretation, discussed above. The free speech provision of Section 10(c) of the Act excludes from its protection any statement that is reasonably viewed as coercing employees in the exercise of protected rights, not merely express threats. Vill. of Calumet Park, 22 PERI ¶ 23 (implied threat); cf. City of Mattoon, 11 PERI ¶ 2016 (finding that pre-election letter to employees could not "reasonably be construed as coercive"). Section 10(a)(8), in turn, can reasonably be read as defining the types of behavior by an employer that qualify as expressly or impliedly coercive when directed towards employees' decisions to become or remain members of a union, or to authorize representation or dues deduction. This includes conduct that interferes with, restrains, coerces, deters, or discourages employees from becoming or remaining members of a labor organization, authorizing representation by a labor organization, or authorizing dues or fee deductions to a labor organization. 5 ILCS 315/10(a)(8).

The legislative history of Section 10(a)(8) of the Act confirms that this is an appropriate construction. Senators Don Harmon and Andy Manar acknowledged that the purpose of the

proposed legislation was to "prohibit[] employers from attempting to influence employees' decisions to seek representation, become a union member, and/or authorize appropriate union deductions." Illinois Senate Transcript, 2019 Reg. Sess. No. 64. Senator Harmon then added the following: "There is overwhelming evidence that employers' attempts to so influence employees is inherently coercive since the employer is understandably perceived as having a great deal of power over its employees. Such power can prevent employees from feeling free to genuinely exercise free choice in deciding whether to exercise their statutory right to join and support a labor organization." Id. This commentary demonstrates the legislature's intent to consider employer's attempts to influence employees' decisions to seek representation, become a union member, and/or authorize dues deduction, to be inherently coercive and outside the protections of Section 10(c) of the Act.

Applying Section 10(a)(8) of the Act here, the Respondent's letter had a reasonable tendency to interfere with, restrain, coerce, deter, and/or discourage employees from becoming or remaining members of a labor organization, authorizing representation by a labor organization, or authorizing dues or fee deductions to a labor organization, as outlined below.

First, the Respondent's letter discouraged and deterred employees from authorizing support for the Union and remaining members of the Union because it made disparaging statements about the Union and the deleterious effect of unionization while offering assistance to employees in revoking their authorization cards. The Respondent suggested that the Union would waste the dues it collected on high-priced lawyers who would file frivolous unfair labor practice charges with the Board. The Respondent also stated that unionization would destroy employees' relationship with the Respondent. The Respondent then presented employees with prospective relief from these anticipated harms: It informed employees that they had the right to revoke their union authorization cards, provided a link to a form letter employees could use to submit their revocation, and an address to which they could send the revocation letter to effectuate their withdrawal of support for the union. Taken together, these features of the letter fall afoul of Section 10(a)(8) of the Act because they qualify as inherently coercive attempts to influence employees' choices regarding union membership, union authorization, and dues deduction.

The Respondent's letter is additionally coercive because it sought to elicit information about whether employees availed themselves of the Respondent's proffered assistance to revoke their authorization cards. After the Respondent provided instructions to employees on how to

revoke their authorization cards, the Respondent informed employees that it would be "a good idea to send a copy of the [completed revocation] letter to HR for your file." A reasonable employee would likely feel pressured to revoke their support for the union where, as here, an employer presents the employee with assistance in revoking support for the union and indicates that it will be keeping track of which employees follow through with revocation.

The Respondent's maintenance of the letter on its website after April 26, 2021, weighs in favor of finding a violation of Section 10(a)(8) of the Act in additional respects because, as of that date, the Respondent's letter also contravened the requirements of Section 10(d) of the Act. Section 10(d) addresses new employer obligations that take effect after a union becomes the employees' exclusive bargaining representative, which in this case occurred on April 26, 2021. In relevant part, Section 10(d) prohibits an employer from "interfere[ing] with the relationship between employees and their exclusive bargaining representative," and it requires an employer to refer all inquiries about union membership to the exclusive bargaining representative, with the exception of questions regarding payroll processes.[9] It stands to reason that an employer's violation of Section 10(d) of the Act is a factor relevant to the unfair labor practice inquiry conducted under Section 10(a)(8) of the Act. Indeed, both provisions appear in the section of the Act devoted to unfair labor practices, were enacted at the same time, and further the common goal of ensuring that employees can make independent decisions about union membership, authorization, and dues deduction, without interference from the employer.

Here, however, the Respondent's letter contravened the requirements of Section 10(d) of the Act in two respects after April 26, 2021. First, it interfered with the relationship between employees and their exclusive bargaining representative by suggesting that employees file complaints against the Union with the Illinois Department of Labor. The Respondent's suggestion to this effect has a reasonable tendency to create a schism between employees and their union and in turn foster employees' disaffection from the union when viewed in the context of the letter's other statements.

Second, the Respondent impermissibly invited employees to ask the Respondent questions about union membership. It anticipated questions or concerns from employees about revocation of union cards and encouraged employees to contact the Respondent: "if you have any questions

[9] "[T]he employer may communicate with employees regarding payroll processes and procedures." 5 ILCS 315/10(d).

or concerns, please contact me [Steinke] or the CGH Human Resources Department." Although the Respondent's invitation of questions is stated in general terms, it is clear from its placement and font color that the Respondent contemplated receipt of questions pertaining to union membership. The Respondent's failure to refer such anticipated questions to the exclusive bargaining representative, when viewed alongside the other statements discussed above, supports the conclusion that the Respondent violated Section 10(a)(8) of the Act.

Contrary to the Respondent's assertion, Section 10(c) does not provide safe harbor for the collection of statements identified above as unlawful. The Respondent's statements qualify as coercive in the aggregate and therefore fall outside the scope of protection offered by Section 10(c). See discussion supra.

There is likewise no merit to the Respondent's assertion that a reasonable employee would view Steinke's letter solely as a non-coercive rebuttal of previously published articles and tweets. The letter does more than that. It expresses additional and separate statements that, viewed collectively, discourage, deter, and coerce employees in their decisions to authorize support for the Union, remain Union members, and authorize dues deduction. The permissible statements in Steinke's letter cannot be used to whitewash the impermissible ones.

Similarly, the Respondent's claim that employees requested information from the Respondent about revocation of union authorization cards does not insulate the Respondent from liability here. The Respondent's reliance on case law from the federal sector is misplaced because the National Labor Relations Act includes no corollary to Section 10(a)(8) of the IPLRA, and the NLRB's decisions are therefore of limited value here. Compare Mattoon Cmty. Unit Sch. Dist. No. 2 v. Illinois Educ. Lab. Rels. Bd., 193 Ill. App. 3d 875, 882 (4th Dist. 1990) (respondent's reliance on NLRB's interpretation of its rules was rejected where IELRB's rules were different) with Kane Cty. v. Illinois State Lab. Rels. Bd., 165 Ill. App. 3d 614, 620 (2d Dist. 1988) (where language of the IPLRA and NLRA are similar, the IPLRA can be "interpreted in conformity with Federal decisions") and Illinois Council of Police v. Illinois Lab. Rels. Bd., 387 Ill. App. 3d 641, 661 (1st Dist. 2008) (same).

Even if federal caselaw were deemed applicable, the Respondent's evidence would not support its defense. In some cases, the NLRB has stated that an employer's assistance to employees in revoking their authorization cards violates the NLRA when the employer initiates the suggestion to revoke. Liberty Homes, Inc., 216 NLRB 1102, 1106 (1975); Jai Lai Cafe, Inc.,

198 NLRB 781, 784 (1972). In other cases, the NLRB has held that "an employer may lawfully inform employees of their right to revoke their authorization cards even if employees have not solicited such information, as long as the employer makes no attempt to ascertain whether employees will avail themselves of this right, nor offers any assistance or otherwise creates a situation in which employees would tend to feel peril in refraining from such revocation." Mariposa Press, 273 NLRB No. 83 (1984); R. L. White Co., 262 NLRB 575 (1982).

Here, the Respondent's provision of sample revocation letters to employees would likely be deemed unlawful under the first line of cases, supra, because the Respondent has not offered sufficient probative evidence that the idea to pursue revocation originated with employees. The proposed testimony offered by HR Director Baylor-Schmidt, that she received verbal inquiries from employees about card revocation, is too thin to support that assertion. Indeed, a federal ALJ in a decision later affirmed by the NLRB, reached a similar conclusion where he found "there is scant evidence of employees inquiring about card revocation other than the statements by management representatives." Camvac Int'l, 288 NLRB 816, 857 & n. 2 (1988) (ALJ declined to find that idea to pursue revocation originated with employees on these grounds; Board affirmed conclusion and also noted that employer had provided more than minimal aid in revocation).

The letters drafted by employees addressing revocation issues are unreliable hearsay if offered to support the Respondent's claim that those employees in fact requested revocation or that the idea to pursue revocation originated with them. Ill. R. Evid. 801(c). While the Respondent could have called the drafters to testify about their decision-making processes, the parties elected to proceed on a stipulated record and such evidence is therefore absent. The Respondent contends that the letters should be relied upon for their effect on the listener, Baylor-Schmidt, who received them, but their effect on the listener is not relevant to the core inquiry of whether the idea to pursue revocation originated with the employees.[10]

In the alternative, the Respondent's conduct also exceeded the allowable limits set forth in the second line of cases because the Respondent sought to discover the identity of the individuals

[10] Indeed, it is worth noting that all the letters are dated after Baylor-Schmidt sent an email to employees instructing them how to revoke their authorization cards and informing them that it would be a "good idea" to send HR a copy of their revocation letters. And while Baylor-Schmidt's email is not alleged as an unfair labor practice under Section 10(a)(8), which became law only later, her email highlights the difficulties in relying on the Respondent's proffered evidence for the proposition that the idea for revocation originated with employees.

who availed themselves of the offered assistance. Indeed, the Respondent encouraged employees to disclose whether they in fact used the proffered form letter to revoke their authorization card by stating, "it is also a good idea to send a copy of the letter to HR for your file." Such a statement is undoubtedly coercive, even if couched as a helpful suggestion, because it gives the accurate impression that the Respondent is keeping track of employees' support of the Union. This coercive affect is heightened when viewed in the context of the other statements in the letter, discussed above, and the provision of link to a sample revocation letter.

Thus, the Respondent's maintenance of Steinke's "letter to the editor" on its website from December 20, 2019 to July 6, 2021, violated Sections 10(a)(8) and (1) of the Act.

V. CONCLUSIONS OF LAW

1. The Union's charge is timely filed.
2. The Respondent violated Sections 10(a)(8) and (1) of the Act when it maintained Dr. Steinke's "letter to the editor" on its website from December 20, 2019 to July 6, 2021.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the Respondent, its officers and agents, shall:

1) Cease and desist from:
    a. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them in the Act.
    b. Interfering with, restraining coercing, deterring, or discouraging its employees from: (i) becoming or remaining members of a labor organization; (ii) authorizing representation by a labor organization; or (iii) authorizing dues or fee deductions to a labor organization.
    c. Interfering with the relationship between employees and their exclusive bargaining representative.
    d. Failing to refer all inquiries about union membership, exclusive of payroll processes, to the exclusive bargaining representative.
2) Take the following affirmative action necessary to effectuate the policies of the Act:

a. Refer all future inquiries about union membership, exclusive of payroll processes, to the exclusive bargaining representative.
b. Post, at all places where notices to employees are normally posted, copies of the Notice attached to this document. Copies of this Notice shall be posted, after being duly signed, in conspicuous places, and be maintained for a period of 60 consecutive days. The Respondent will take reasonable efforts to ensure that the notices are not altered, defaced or covered by any other material.
c. Notify the Board in writing, within 20 days from the date of this Decision, of the steps the Respondent has taken to comply with this order.

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 seven 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 Board's General Counsel, at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, or to the Board's designated email address for electronic filings, at ILRB.Filing@Illinois.gov. All filing must be served on all other parties. Exceptions, responses, cross-exceptions and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement of listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 30-day period, the parties will be deemed to have waived their exceptions.

Issued at Chicago, Illinois this 28th day of March, 2022

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

/S/ *Anna Hamburg-Gal*

Anna Hamburg-Gal
Administrative Law Judge