

7/22/11

STATE OF ILLINOIS  
ILLINOIS LABOR RELATIONS BOARD  
LOCAL PANEL

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| International Brotherhood of Electrical Workers, Local 21, | ) |                      |
|  | ) |                      |
| Charging Party   | ) |                      |
|  | ) |                      |
| and  | ) | Case No. L-CA-10-026 |
|  | ) |                      |
| City of Chicago,   | ) |                      |
|  | ) |                      |
| Respondent   | ) |                      |
|  | ) |                      |
| Service Employees International Union, Local 73,           | ) |                      |
|  | ) |                      |
| Intervenor   | ) |                      |

**DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD  
LOCAL PANEL**

On November 17, 2010, Administrative Law Judge (ALJ) Colleen Harvey issued a Recommended Decision and Order (RDO) in the above-captioned case, finding that the City of Chicago (Respondent or City) violated Section 10(a)(4) and (1) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), as amended, by repudiating a collective bargaining agreement and by unilaterally implementing terms of an agreement it had reached with other unions to those employees within the City's "Unit II" collective bargaining unit who were members of, or serviced by, the International Brotherhood of Electrical Workers, Local 21 (Charging Party or IBEW). Unit II is jointly represented by the Charging Party and by Service Employees International Union, Local 73 (Intervenor or SEIU), which intervened in the case.

Both the City and SEIU filed timely exceptions to the ALJ's RDO pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200 through 1240.

The Charging Party filed a timely response, and all three parties presented oral argument at the Board's public meeting held April 12, 2011. After reviewing the record, exceptions, and response, and after considering the oral arguments, we reverse the ALJ's RDO and dismiss the complaint.

### **Issues presented**

The general issue concerns whether the minority members of a jointly represented collective bargaining unit who are members of, or serviced by, one of two unions constituting the joint representative are bound by concessions approved by a majority of the members of the unit where the minority members never voted on those concessions but where their votes would have been insufficient to prevent approval by a majority of the unit. More specifically, the issue concerns whether, under the peculiar facts of this case, their servicing union had agreed to the concessions, or bargained to impasse over those concessions. The case also touches on the extent of the employer's obligation to bargain with all members of a joint representative.

### **Factual background**

Unit II is jointly represented by IBEW and SEIU, with IBEW servicing about 375 of the unit members<sup>1</sup> and SEIU servicing the rest of the approximately 2,700 employees in the unit. Unit II operates under a single collective bargaining agreement, but with side letters that apply to either IBEW serviced members or SEIU serviced members.<sup>2</sup>

Unit II's contract expired on June 30, 2007, and negotiations for a successor contract began in August 2007. The parties were still negotiating over this successor contract between

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<sup>1</sup> IBEW services those employees in the job classifications of Aviation Communications Officer, Police Communications Officer I, and Police Communications Officer II.

<sup>2</sup> We have repeatedly held that Unit II is a single bargaining unit jointly represented by more than one bargaining unit. City of Chicago, 26 PERI ¶44 (IL LRB-LP 2010); City of Chicago, 16 PERI ¶3016 (IL LRB 2000); City of Chicago (Police Dep't), 11 PERI ¶3024 (IL LRB 1995); City of Chicago (Aviation Security Officers), 5 PERI ¶3020 (IL LRB 1989); City of Chicago (Detention Aides), 2 PERI ¶3014 (IL LRB 1986); City of Chicago (Watley & Holcomb), 2 PERI ¶3009 (IL LRB 1986).

January and June 2009, but were making little progress. In June 2009 the City served a notice of layoff for approximately 289 Unit II employees who were serviced by SEIU. No members serviced by IBEW received layoff notices. Unit II members serviced by SEIU voted at a general membership meeting to authorize its leaders to negotiate a collective bargaining agreement that would prevent the contemplated layoffs.

Outside the context of Unit II, the City also bargains with approximately 43 separate labor organizations, several of which form the Coalition of Unionized Public Employees (COUPE). Each of these unions has a separate collective bargaining agreement with the City, but the COUPE unions negotiate as a coalition. In 2007 COUPE unions and the American Federation of State, County and Municipal Employees (AFSCME) and the Teamsters agreed to a collective bargaining agreement providing a 16% wage increase over a five-year period through June 30, 2012. However, in early 2009, the City asked to negotiate concessions to address a budget shortfall. By June 2009 the parties to those negotiations had reached a "Master COUPE Agreement" which avoided layoffs of employees represented by COUPE unions in exchange for concessions that included unpaid holidays, a reduced workweek, and changes in overtime compensation. Employees who had received layoff notices and who were represented by unions that did not agree to the concessions, including AFSCME, were subsequently laid off. Although Unit II is not a part of COUPE, its representatives were present at some of the COUPE negotiation meetings because the Intervenor also represents janitorial workers outside of Unit II as part of COUPE, and Charging Party's business representative, Jerry Rankins, was present at some of the meetings in his capacity with the Chicago Federation of Labor.

SEIU asked Matt Cleveland, an attorney representing the Chicago Federation of Labor who was involved in the COUPE negotiations, to assist it in avoiding layoffs of its members

within Unit II. On June 18, 2009, City representatives met with representatives of SEIU regarding Unit II. They mostly discussed issues relating to the members serviced by SEIU because IBEW's business representative, Rankins, was out of town that day. No significant discussions regarding the Master COUPE Agreement were held that day.

On June 24, the Chicago Federation of Labor held a meeting to encourage unions to accept the Master COUPE Agreement. Rankins was present at this meeting, and Cleveland there informed him that the negotiations for the Unit II collective bargaining agreement were almost finished, and that there was another Unit II bargaining session scheduled for later that day. That afternoon, Rankins and IBEW's counsel, Robert Bloch, met with Cleveland and SEIU's President, Christine Boardman, and Secretary/Treasurer, Matt Brandon. The Master COUPE Agreement was not discussed at this time.

Later on the afternoon of June 24, the Unit II bargaining session took place with Cleveland present, SEIU represented by Brandon and Boardman, IBEW represented by Rankins and Bloch, and the City represented by five people: Chief Labor Negotiator David Johnson, Assistant Chief Labor Negotiator James Brennwald, Director of Labor Relations Don O'Malley, Assistant to the Mayor Martin Gomez, and Budget Department Representative Carol Hamburger. IBEW and SEIU requested a wage increase comparable to the 16% increase over five years negotiated by COUPE and AFSCME; the City countered with a shorter term with total wage increases of 9.25% in exchange for concessions similar to those in the Master COUPE Agreement, a copy of which was passed out. IBEW specifically objected to two terms of the Master COUPE Agreement: unpaid holidays and a workweek reduction. Because none of its members had received layoff notices, it felt it would not receive any benefit from the

concessions.<sup>3</sup> In contrast, SEIU said it would agree to waive a retroactive wage increase, but only if the Master COUPE Agreement was modified to eliminate the workweek reduction. Johnson said he would have an answer to that request the next day.

On June 25, Johnson received approval to eliminate the workweek reduction and informed Cleveland of that fact. For ease of reference, the ALJ and the parties refer to the result of this modification as the “Modified COUPE Agreement.” On behalf of the City, Brennwald emailed Cleveland an outline of the terms of the City’s last, best and final offer—an outline that did not refer to the Modified COUPE Agreement, nor include its terms. On June 26, Cleveland forwarded this to IBEW’s Rankins and Bloch. In his email, Cleveland noted the City had agreed to exempt Unit II from the reduced workweek provisions of the Master COUPE Agreement, but that the outline did not refer to the Modified COUPE Agreement or include its terms. It states: “Please note that you will not see that [sic] the COUPE 2(b) removal in this document. I have confirmation from Dave Johnson and Ed Hogan that there is no problem with having Unit II be exempt from Para 2(b) of the COUPE Amendment.” Bloch then contacted Brennwald and requested a meeting with the City’s representatives to discuss the terms of the agreement.

On June 30, Johnson and Brennwald from the City and Rankins and Bloch from IBEW met to discuss the Unit II collective bargaining agreement and the Modified COUPE Agreement. Rankins and Bloch again expressed concern that Charging Party was not receiving any benefit for agreeing to the Modified COUPE Agreement, and that it would be difficult to convince its membership to ratify its terms. In return for their approval, they wanted retroactive wage increases, a proposal rejected by the City. They then proposed an additional step increase, which was also rejected by the City.

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<sup>3</sup> Johnson testified he countered this assertion with the argument that agreeing to the Master COUPE Agreement would shield IBEW’s unit members from any future layoffs over the next two years.

On July 1, Brennwald sent to the Unit II representatives a more comprehensive version of the City's last, best and final offer. Again, the list did not reference the Modified COUPE Agreement, or contain its terms. The next day, July 2, Rankins on behalf of IBEW, Brandon on behalf of SEIU, and Brennwald on behalf of the City met, and Brennwald distributed and presented the City's last, best and final offer which incorporated previously discussed provisions, including the wage increase and waiver of a retroactive wage increase. The Modified COUPE Agreement was not attached, nor specifically referenced at this meeting. Rankins again proposed Charging Party's members receive retroactive pay, and he objected to a side letter that eliminated double time overtime.

On July 6, Cleveland emailed Johnson and Brandon about actually drafting the Modified COUPE Agreement and four days later Brandon emailed Johnson and Brennwald to clarify that SEIU's agreement to the Modified COUPE Agreement would prevent layoff of its members. IBEW was not included in either of these communications.

Around July 12, IBEW's members rejected the City's last, best and final offer by a vote of 311 to 3. Along with their ballots, IBEW had provided its members a copy of the City's last, best and final offer, but not a copy of the Modified COUPE Agreement.

On July 14, Johnson sent IBEW and SEIU a letter confirming the agreement with regard to the last, best and final offer, the Modified COUPE Agreement, and no layoffs.<sup>4</sup> The letter was sent by regular mail and, though received by the IBEW on July 17, was not seen by Rankins until

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<sup>4</sup> In the letter, Johnson indicated his understanding that the ratification process would take place between July 16 and 18. He indicated the City was amenable to holding off on the layoffs "subject to the following: in the event the ratification process does not result in acceptance by Unit II of the City's offer, it is understood and acknowledged that the City will thereafter implement the provisions of what we have jointly referred to as 'the COUPE agreement' (unpaid holidays, compensatory time for overtime, and work week reduction)."

July 20. SEIU responded to Johnson by facsimile stating it understood the terms, but it did not share its response with IBEW.

Around July 16, SEIU's members voted to ratify the successor collective bargaining agreement and the Modified COUPE Agreement by a vote of 911 to 96. Along with their ballots, SEIU provided its members with a one-page summary of the agreement which had been prepared by Brandon and which referenced the terms of the last, best and final offer *and* the Modified COUPE Agreement.

On July 22 Brandon combined the two vote totals and informed Johnson that Unit II had ratified the agreement by a vote of 914 to 407. When Cleveland learned of this, he drafted the final Modified COUPE Agreement, and on July 29 sent a copy of this draft to Johnson, Brandon and Boardman. On August 4 Brandon signed the Modified COUPE Agreement. He subsequently testified that he signed it on behalf of SEIU. The City Council later ratified the agreement and it went into effect on August 6, with unit members receiving wage increases effective August 1. The collective bargaining agreement provided for a 6.5% wage increase on that date, with an additional 3.0% wage increase four months later on January 1, 2010.<sup>5</sup>

On August 1, SEIU's Brandon wrote to a City official to complain that the City was not applying the overtime terms of the Modified COUPE Agreement to employees represented by IBEW. The official's initial response was that the City would apply it only to employees whose bargaining units had signed the agreement. On August 9, Brandon emailed Brennwald, who said he would consult with Johnson about the matter.

On August 17, Cleveland sent to Bloch a draft of the Modified COUPE Agreement, and Bloch subsequently inquired of Brennwald whether it was binding on IBEW when IBEW had

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<sup>5</sup> The total of 9.5% is slightly higher than the 9.25% originally offered by the City on June 24 in exchange for concessions similar to those contained in the Master COUPE Agreement.

not signed it. Johnson responded, stating it would be applied to all employees in Unit II. Johnson said the City and Unit II representatives had discussed and resolved issues concerning the COUPE terms at the June 24 meeting, to which Bloch responded that the IBEW had never agreed to the Modified COUPE Agreement. IBEW filed its unfair labor practice charge on October 8, 2009.

### **Analysis**

As an initial matter, we reject IBEW's argument that, before it can be bound to the terms of the Modified COUPE Agreement, it must have actually assented to its terms. It cites N.L.R.B. v. CBS Broadcasting, Inc., 343 N.L.R.B. 871, 872 (2004), for the proposition that "no substantive modification of the collective-bargaining agreement could be lawfully made without the assent of both unions of the joint representative," but the City rightfully points out that this statement was dictum, unnecessary to the outcome of a case where the employer had bargained with only one of the two unions providing joint representation.<sup>6</sup> Decisions of the NLRB may provide useful guidance, but we are not bound by its decisions, see 5 ILCS 315/15.1 (2010); Bd. of Trustees/Univ. of Ill. at Urbana-Champaign, 25 PERI ¶108 (IL ELRB 2009), and certainly are not bound by its dicta. Here, the City had bargained with both components of the joint representative, and whether it could impose the terms of the Modified COUPE Agreement depends not on whether it had bargained with IBEW, but whether it had bargained to impasse.

Under the particular and unusual circumstances of this case, we find the City had bargained to impasse not only with SEIU, but also with IBEW. We find this result compelled by a number of factors. First, we cannot overlook the fact that provisions of the original COUPE

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<sup>6</sup> The administrative law judge, whose decision was under review by the NLRB, found that a substantive change required merely the "active involvement of both unions," an assertion directly corrected by the NLRB merely by the observation that a member of a joint representative could waive its right to such involvement. Id. at n.7.

Agreement were well known in the Chicago labor relations community. They were not only reported in the general press, but IBEW's business representative, Rankins, was, in his capacity with the Chicago Federation of Labor, present at meetings discussing the original COUPE Agreement and thus had personal knowledge of what the City was attempting to accomplish in the labor community to address its budgetary problems. The original COUPE Agreement was also distributed to the IBEW at the June 24 meeting, although IBEW was no doubt already familiar with its general points.

The City clearly engaged in negotiations over the terms of the original COUPE Agreement. It acquiesced to SEIU's request to eliminate the workweek reduction provision (resulting in what was coined the Modified COUPE Agreement), and refused to acquiesce to IBEW's request to eliminate the unpaid holiday provision and later requests for retroactive wage increases or inclusion of an additional step increase. Members serviced by IBEW clearly enjoyed the benefits derived from these negotiations – the wage increase the City indicated was contingent upon COUPE-type concessions, and its members also enjoyed the elimination of the workweek reduction from the original COUPE Agreement, obtained at SEIU's initiative.

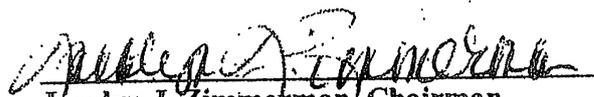
Moreover, IBEW's acceptance of the removal of paragraph 2(b)'s workweek reduction from the Modified COUPE Agreement naturally suggests the acceptance of the items not removed, i.e., the rest of the package. We note IBEW did not push for additional bargaining after the removal of paragraph 2(b); it instead submitted the City's articulation of its last, best and final offer to its members for ratification. Its conduct suggests a recognition that it was at an impasse on attempts to further modify the original COUPE Agreement.

The overall set of facts supports the City's position, and that of SEIU, that the content of the City's last, best and final offer was contingent on the acceptance of concessions articulated in

the Modified COUPE Agreement. Obviously, matters would have been clearer had the City referenced the Modified COUPE Agreement in its last, best and final offer, or had included its terms within that document. In addition, better efforts could have been made to keep all parties equally informed of the exact status of the negotiations. “Employers have an obligation to bargain with joint representatives on a joint basis,” CBS Broadcasting, 343 NLRB at 872, and the labor organizations comprising the joint representative have a similar obligation to act on a joint basis. Here, simply copying a third party on key communications would have avoided confusion, and eliminated the potential for allegations of misunderstanding.

Nevertheless, based on a totality of the circumstances of this case, we cannot find that the City violated Section 10(a)(4) and (1) of the Act by implementing the terms of the Modified COUPE Agreement on the Unit II members serviced by IBEW. We further reject the ALJ’s finding that, in doing so, the City had repudiated the collective bargaining agreement. For these reasons, we dismiss the charge.

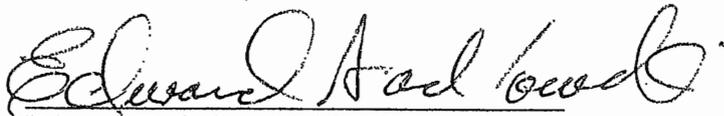
BY THE LOCAL PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

  
Jacalyn J. Zimmerman, Chairman

  
Charles E. Anderson, Member

Member Sadlowski, concurring in part, and dissenting in part:

I agree with my colleagues that the City did not repudiate the collective bargaining agreement by implementing the terms of the Modified COUPE Agreement; however, I must respectfully dissent from the majority's finding that City did not violate Section 10(a)(4) and (1) of the Act when it unilaterally implemented those terms. The parties had engaged in very few formal bargaining sessions—too few to warrant finding an impasse under most circumstances. The majority nevertheless finds impasse had been reached based upon inferences it derives from various actions of the parties. These actions primarily suggest a lack of clarity and do not support a finding that impasse had been reached. I would have affirmed that portion of the ALJ's RDO that found the City had violated Section 10(a)(4) and (1) by unilaterally implementing the terms of the Modified COUPE Agreement where impasse in the negotiations had not been reached with one of the joint representatives.



Edward E. Sadlowski, Member

Decision made at the Local Panel's public meeting in Chicago, Illinois, on July 12, 2011; written decision issued at Chicago, Illinois, July 22, 2011.