

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL**

Service Employees International Union,)	
Local 73,)	
)	
Charging Party)	
)	
and)	Case No. L-CA-13-035
)	
County of Cook,)	
)	
Respondent)	

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

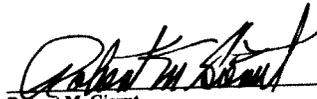
On March 25, 2013, Executive Director Melissa Mlynski issued a partial dismissal of an unfair labor practice charge filed by the Service Employees International Union, Local 73 (Charging Party) in the above-referenced case. The Charging Party alleged that the County of Cook (Respondent) engaged in unfair labor practices within the meaning of Section 10(a) of the Illinois Public Labor Relations Act, 5 ILCS 315/10(a) (2010), by (1) unilaterally changing the past practice of when it began paying employees added to an existing bargaining unit in accordance with the parties' collective bargaining agreement, (2) failing to respond to the Charging Party's request for relevant information concerning that change and (3) failing to implement the parties' tentative successor collective bargaining agreement. The Executive Director dismissed the allegations regarding the alleged unilateral change and failure to provide information but issued a complaint for hearing as to the tentative agreement.

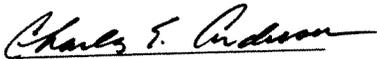
The Charging Party filed a timely appeal of the Executive Director's partial dismissal pursuant to Section 1200.135(a) of the Board's Rules and Regulations, 80 Ill. Admin. Code §1200.135(a). The Respondent filed no response. After reviewing the record and appeal, we

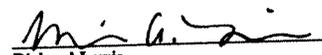
affirm the dismissal of the alleged unilateral change in the parties' past practice, finding that allegation to be untimely for the same reasons given by the Executive Director.¹ However, we remand to the Executive Director for issuance of a complaint for hearing on the matter of the Respondent's alleged failure to provide relevant information requested by the Charging Party.

The allegation that the Respondent did not provide relevant information requested by the Charging Party was dismissed for failure of the Charging Party to provide evidence in support of that claim as directed by the Board's investigator.² While the Charging Party's written appeal still fails to present a clear statement of the information it was seeking from the Respondent, we find that the accompanying supporting documentation, which was also tendered to the Board's investigator, presents a claim that warrants the issuance of a complaint.

BY THE LOCAL PANEL OF THE ILLINOIS LABOR RELATIONS BOARD


Robert M. Gierat
Chairman


Charles E. Anderson
Board Member


Richard Lewis
Board Member

Decision made at the Local Panel's public meeting in Chicago, Illinois, on June 13, 2013; written decision issued at Chicago, Illinois, June 26, 2013.

¹ In its appeal, Charging Party argues that the filing of the charge is not untimely under Section 11(a) of the Act because (1) Charging Party should not be penalized for allowing the Respondent a reasonable time to comply with assurances subsequently made by the Respondent that unit members eventually would be placed at the appropriate pay grade and step with retroactivity or (2) each of those assurances constituted a separate and distinct violation with its own six month limitation for filing charges under Section 11(a). We do not find merit in either argument and find that those alleged assurances related to remedying the earlier alleged violation which, as the Executive Director found, the Charging Party had been aware of long before six months prior to the filing of the charge.

² The Charging Party's appeal asserts that the Executive Director dismissed the allegation regarding the Respondent's failure to provide information because the Charging Party failed to respond to the investigator's request for clarification in an outline format. We find nothing which supports this assertion. The Charging Party obviously misunderstood that in asking the Charging Party to outline its argument the investigator was seeking more details and not a specific type of format.

employees. Most relevant to the instant charge is a practice whereby the Employer would, shortly after Board certification of a group of employees, place the affected employees within the Union's negotiated step and grade plan. The Union also asserts that if there was a delay in the placement process, the Respondent would also generally make changes retroactive to the appropriate start date for affected employees.

The bargaining units at issue in this case are termed "corporate" units, i.e., non-hospital system employees. The attachment following this report lists the units certified by the Board since February 2008. Generally, the Union asserts that the Respondent has abandoned the pay adjustment practice with no notice to the Union of its intent to do so. In fact, the Union claims that the Respondent's agents have consistently advised the Union of its belief that the Respondent's stated policy has not changed.

The Charging Party asserts that it first became aware of the issue in general terms in 2010, when it learned from employees that they had not received adjustments after certification of the units in 2008. The Union claims it then engaged in a series of discussions and requests with various agents of the Respondent to seek compliance with the practice. Among those that it contacted on the topic were Human Resources Deputy Bureau Chief Lisa Meador, Deputy Bureau Chief Patty Davis, as well as Human Resources Director Jonathan Rothstein, who is responsible for coordinating contract negotiations and administration for the Respondent. The Union indicated that sometime in 2010, Rothstein assured union representative Betty Boles that the Respondent would continue this practice. The Union forwarded a letter from Boles to Davis dated September 15, 2010, outlining the assurances given by Rothstein, and indicating a list of the units that it believed were at issue. The letter requested the Employer provide confirmation that it had made the adjustments.

The Union asserts that the Respondent thereafter placed “some” employees into the proper step and grade. However, it apparently did not receive any further information from Davis concerning the issue. The Union offered no details to the Board concerning its information concerning the matter; however, a March 2011 email to Rothstein from Boles lists four units as being at issue. A second email to Rothstein in June references three units by employee titles: Highway Supervisors Personnel Assistants, and Administrative Assistants 4 and 5.

I note that most of these communications between Boles and Employer representatives requested some response from the recipient. The Union alleges, as part of the charge, that the Respondent has failed to respond to information requests. It is possible that the Union views these communications as requests for information.

The Union also indicated that throughout this process, the parties were engaged in contract negotiations. It asserts that in June 2012, the parties reached a tentative agreement on a successor master agreement for the Charging Party’s bargaining units. It claims that the successor agreement included a specific provision concerning the status of the newly-certified units. The Union’s evidence in this regard consists entirely of internal union communications. The Union admits that the Respondent has not yet formally approved and executed the new contract. However, it also claims that the Respondent has already implemented many of the economic benefits of the tentative agreement. It asserts that the issue of newly certified employees step placement has not been implemented.

By letter dated November 9, 2012, the Board agent assigned to the case requested the Charging Party provide clarification concerning its claims and evidence in support of its factual allegations. The letter included a specific request that the Charging Party outline any and all

information requests at issue in the case, indicating the information requested and what response, if any, received by the Union to the request. The Charging Party filed its position statement on December 3, 2012. The position statement is essentially a narrative of the events the Union believed relevant to the charge. Therein, the Union referenced a number of communications between its agents and the Respondent's representatives. The Union also included copies of emails and letters as exhibits in support of the narrative. However, the position paper does not include any outline of information requests at issue in this case.

II. DISCUSSION AND ANALYSIS

As a preliminary matter, I find that the allegation concerning Respondent's alleged failure to implement the June 2012 tentative agreement concerning the affected employees raises an issue for hearing. Accordingly, this document will not discuss that specific claim or the facts relevant to that allegation. However, I find that the remainder of the charge fails to raise an issue for hearing.

A portion of the charge is untimely. Section 11(a) of the Act requires that a charge must be filed within six months of the action giving rise to the alleged unfair labor practice, and within six months of the date when the affected party knew or became aware of the unlawful action. According to the Union, there was a practice between the parties whereby the Employer would, shortly after the Board certification of a group of employees, place the affected employees within the negotiated step and grade plan for bargaining unit employees. The Union's general assertion is that the Respondent unilaterally abandoned this practice sometime after 2008. It claims that it received no notice of the change, but learned of the issue from affected employees sometime in 2010. Thereafter, the Union began a series of interactions with the Respondent's representatives on the issue. It offers as evidence a series of exchanges by letter or email; these are dated

between September 2010 and June 2011. The Union also asserts that Respondent's representatives repeatedly asserted that it had not abandoned the policy. Finally, the Union claims that sometime in or before June 2012, the parties reached agreement on contract language concerning the matter.

I find that any claim concerning the Respondent's conduct prior to the tentative agreement in June 2012 is untimely filed. By its own account, the Union became aware of the issue in 2010. Arguably, the calculation of the limitations period should commence from that point. Even if one allows for the Union's reliance on the asserted representations by Respondent's agents, there is a very large question of whether that reliance should extend the limitations period on the issue until April 2012, which is six months before the Union filed the instant charge. As stated above, the communications between the parties on this issue ended in June of 2011, according to the documents provided to the Board agent in this case.

More telling in this regard is the Union's decision to incorporate the issue into negotiations for the successor contract. It appears inconsistent to assert that the Charging Party had sufficient faith in Respondent's representations on the matter to delay filing this charge, and at the same time sufficient doubt about those assurances to seek contract language on the issue. I note that the Charging Party did not offer evidence that the parties had language concerning this practice in any prior agreement. Given that, the decision to seek language represents a degree of concern about the policy that demonstrates Charging Party's lack of faith in Respondent's assurances. In sum, the available evidence shows that Charging Party's awareness of the circumstance existed well outside the six month limitations period for the instant charge.

The Charging Party's remaining claim concerns an alleged failure to respond to a request for information. The Board agent's correspondence requested an outline of the specific requests

at issue in the charge. The Charging Party's position statement failed to provide this outline. The position statement includes a number of communications between Charging Party and Respondent; most, if not all request some sort of a reply. However, it is not clear which of these communications are viewed by the Charging Party as information requests, and which are not. Under these circumstances, I find that the Charging Party has failed to provide sufficient information in support of this claim.

III. ORDER

Accordingly, the portions of the instant charge as described above are hereby dismissed. The Charging Party may appeal this partial dismissal to the Board any time within 10 days of service hereof. Such appeal must be in writing, contain the case caption and number, and must be addressed to the General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois, 60601-3103. The appeal must contain detailed reasons in support thereof, and the Charging Party must provide it to all other persons or organizations involved in this case at the same time it is served on the Board. The appeal sent to the Board must contain a statement listing the other parties to the case and verifying that the appeal has been provided to them. The appeal will not be considered without this statement. If no appeal is received within the time specified, this partial dismissal will be final.

Issued in Chicago, Illinois, this 25th day of March, 2013.

**ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL**



Melissa Mlynski, Executive Director