

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

Wayne Harej,)	
)	
Charging Party)	
)	
and)	Case No. L-CB-12-032-C
)	
Fraternal Order of Police, Lodge 7,)	
)	
Respondent)	

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

On October 29, 2014, Administrative Law Judge (ALJ) Anna Hamburg-Gal issued a Recommended Decision and Order (Compliance RDO) in the above-captioned case, finding that Respondent, Fraternal Order of Police, Lodge 7 (FOP), failed to comply with an earlier order issued by the Illinois Labor Relations Board in Case No. L-CB-12-032. Charging Party, Wayne Harej, filed exceptions to the ALJ's Compliance RDO pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200 through 1300. Respondent filed a response and cross-exception. Based on our review of the RDO, exceptions, cross-exceptions, and record, we affirm the Compliance RDO as explained below, and we order Respondent to pay the reasonable litigation expenses incurred by Charging Party.

This is a compliance case initiated after the Respondent: (1) failed to answer a complaint issued in Case No. L-CB-12-032; (2) failed to file exceptions to the resulting default order recommended by ALJ Anna Hamburg-Gal; (3) failed to file a petition seeking review by the Appellate Court of the resulting General Counsel order which

noted that the ALJ's recommendation had become final; and (4) also failed to comply with the requirements of that order.

On September 24, 2013, a little over a year after the General Counsel issued his September 11, 2012 order, FOP filed a "Notice of Compliance."¹ On October 11, 2013, Charging Party, Wayne Harej, filed a response, disputing FOP's contention that it had complied with the order. The Board's Compliance Officer, Michael Provines, construed Harej's response as a request for enforcement, and on May 22, 2014, issued a Compliance Order and Notice of Hearing in which he observed that FOP had provided no documentary evidence of compliance with any portion of the order and merely submitted a statement that it had complied. He referred the matter to ALJ Hamburg-Gal for a compliance hearing, and such hearing was held on August 21, 2014.

The order issued in the prior case had required FOP to take the following affirmative steps:

1. Provide Harej with information concerning the manner in which [FOP] has calculated the fair share fee assessment, as paid by Harej, and provide Harej with information concerning the manner by which he may object to the fair share fee calculation.

2. Notify the City of Chicago to cease the deduction of fair share fees from Harej until such time as the directive in paragraph (a) above has been followed.

3. Refund to Harej a sum in the amount of all his fair share monies collected after July 19, 2011, a date six months prior to the date on which the charge was filed, plus any interest on those fees if they were held in escrow by FOP.

4. Post, at all places where notices to employees are normally posted, copies of the notice attached hereto and marked "Addendum." Copies of this Notice shall be posted, after being duly signed, in

¹ The ALJ's recommended order required Respondent to notify the Board within 20 days of the steps it had taken to comply. If the Notice of Compliance was intended to fulfill that obligation, Respondent was one year late.

conspicuous places, and be maintained for a period of 60 consecutive days. FOP will take reasonable efforts to ensure that the notices are not altered, defaced or covered by any other material.

At issue before the ALJ was whether FOP had complied with the notice posting requirement and whether it had complied with the requirement that it provide Harej with fair share fee calculations for the years 2006 through 2012. Harej raised a third issue by arguing the hearing should have been continued to allow him to present additional testimony regarding the methodology used in calculating fair share fees and the authentication of the calculations entered into evidence. Finally, FOP raised a fourth issue by requesting sanctions against Harej for frivolous litigation. Two of these topics, the notice posting requirement and sanctions, are raised before the Board, although the issues before the Board differ slightly from those present before the ALJ.

The ALJ's recommendation

On the first issue presented before her, the ALJ concluded that FOP had not complied with the posting requirement. It had posted the notice on the second floor of FOP headquarters for a period of 60 days in the summer. Its agent holds meetings with bargaining unit members in that building, but on the third floor, not the second. It also has membership meetings in that building, but on the first floor, not the second, and it did not have such meetings during July and August. The ALJ found the notice was not posted in "conspicuous places" as required by the Board's order and that it should have been placed on the bulletin boards the City of Chicago is contractually required to provide to FOP at police stations and satellite work locations and also on FOP's website

because those are places where “notices to employees are normally posted.”² She found the posting also inadequate in that there was insufficient evidence it had been signed and dated as required by the Board’s order. She found the fact that FOP had previously posted Board orders solely on the second floor of FOP headquarters without protest was no excuse for failing to post it as directed by the Board’s order. She found the fact that FOP routinely posts other types of notices more broadly undercuts FOP’s claim of hardship. And she found that FOP’s attempts to limit the scope of posting came too late; it should have filed exceptions from the earlier RDO if it thought the Board’s notice requirements were in error.

On the second issue, the ALJ found FOP had complied with the remaining requirements of the Board’s order. Following issuance of the Board’s order, FOP supplied Harej with its fair share fee calculations and informed him of the manner to challenge those calculations. It also provided him with a check for \$1680, although he was entitled to less. The ALJ also found no dispute over whether FOP had informed the City to stop deducting fair share fees from Harej’s pay.³

The ALJ rejected Harej’s request to reopen the hearing because he failed to demonstrate the need for testimony of the two witnesses proposed, and a determination of the appropriateness of the fair share fees was not necessary anyway; rather the issue before her was limited to whether FOP provided Harej with the information needed to challenge the calculations.

² The ALJ found FOP need not post the notice on Facebook or by mailing it because these are not routine means it uses for notices. It uses Facebook only to inform about shootings and City Council meetings.

³ Harej retired in July 2012.

Finally, the ALJ denied FOP's request for sanctions against Harej because sanctions would be inequitable. She noted Harej was not only twice prevailing, but twice aggrieved. She also found that sanctions would not be warranted by application of the legal test for sanctions.

Harej's exceptions and request for sanctions

Within the 30-day period for filing exceptions allowed by Board Rule 1200.135(b), Harej filed as his exceptions a document entitled "Harej's Motion for Sanctions and Exceptions to the FOP's Current Posting of November 18, 2014." Neither part of this document attempts to show error in the ALJ's Compliance RDO. Rather, the only "exception" is to the manner in which FOP has now posted the notice on its web page. The remaining and more substantial part of the document requests and makes a case for issuing sanctions against FOP.

Regarding the posting exception, Harej notes that the Board order requires FOP to "take reasonable efforts to ensure that the notices are not ... covered by any other material," but that on FOP's web site one first sees the most recent notice, and has to scroll down to see earlier documents and eventually, possibly still within the 60-day time frame for Board-ordered posting, will have to click onto a link to view the notice. In this manner the Board-ordered notice becomes "covered" by other material.

Regarding sanctions, Harej notes the following:

- 1) FOP's "Notice of Compliance" states that FOP "posted a Labor Board notice regarding the above decision for a period of six months where notices to employees were normally posted."
- 2) The Board's Compliance Officer directed FOP to provide "a full written response as to what steps it has taken to comply with the Board's Order"

and more specifically to “[p]rovide evidence of how many Notices were posted, where they were posted and the length of time they were posted.”

3) In response to the Compliance Officer’s order, FOP merely stated: “[t]hat the FOP posted the Notice in question for a full six months, four months beyond the required time.”

4) During the course of the hearing necessitated by FOP’s statements, FOP made a request for sanctions against Harej which further needlessly increased the cost of litigation.

FOP’s response and cross-exceptions

In its cross-exceptions FOP states the ALJ’s Compliance RDO assumed it had been required to post where notices to all *bargaining unit or union members* are typically posted, when in fact the Board’s order had required it to post the notice where such notices to all *employees* are typically posted. It claims it did that: it posted the Board’s notice where it typically posts notices to its own, union employees (such as notices required by the Department of Labor): on the bulletin board of the second floor of its own headquarters. It hastens to add that it has now complied with the broader posting required by the ALJ’s Compliance RDO. It said it had similarly posted Board notices on the second floor of its headquarters the last two times the Board required it to post notices, in the Shawn Hallinan and Megan Curry cases (Case Nos. L-CB-13-002 and L-CB-13-007, respectively, both also involving fair share fee information), and it did so without objection. However, FOP confesses that, while the language in the Board’s order in Hallinan was identical to the current order, that in the earlier Curry decision had required it to “post notice at all places ordinarily used by the [FOP] to communicate information to the *bargaining unit employees* at issue” (emphasis added).

FOP further argues that, if the Board agrees with its exceptions, then Harej's request for sanctions must necessarily be rejected. Even if the Board rejects its exceptions, it asserts that the good faith in its position can no longer be questioned. And it asserts that its own request for sanctions before the ALJ were based on Harej's attempt to improperly broaden the scope of the compliance hearing and consequently were not in themselves sanctionable.

Finally, FOP asserts that the question of whether it is currently in compliance with the ALJ's compliance RDO is not properly before the Board.

Analysis

We find the exceptions fail to demonstrate any error in the ALJ's Compliance RDO and consequently adopt that recommendation. Charging Party makes no attempt to demonstrate error in that document, and we are unable to ascertain on this record whether Respondent's web posting ordered by the ALJ in the Compliance RDO is deficient.

Conversely, Respondent's argument that the Compliance RDO should be rejected because it made a good faith attempt to comply with the Board's earlier order is belied by the fact that it provided the very same limited and ineffective posting of the Board's order in the earlier Megan Curry case, Case No. L-CB-13-007, where it clearly was directed to post notice where it would be conspicuous to bargaining unit members. Respondent's conduct demonstrates a clear attempt to thwart the intent of the Board's order, rather than an attempt to strictly comply with its wording. We further note that Respondent makes no attempt to challenge the ALJ's finding of insufficient evidence that the notices had been signed and dated as required by the Board's order.

We add to the ALJ's recommendations an obligation on the Respondent to pay the reasonable costs and attorneys fees incurred by Charging Party in the compliance proceeding. Section 11(c) of the Act provides that Board orders in unfair labor practice proceedings may include sanctions,⁴ and Section 1220.90 of the Board's rules allows for such sanctions. Subsection (d) allows for the filing of motions for sanctions at various stages of the Board's proceedings, including, in subsection (d)(3), before the Board and after issuance of an RDO, provided they be filed "no later than 7 days after receipt of the last brief scheduled to be filed with the Board, or no later than 7 days after oral argument before the Board," a restriction complied with here.

Respondent's refusal to supply the information ordered by the Board's Compliance Officer compelled a hearing on the topic of compliance with an order issued in a case Charging Party had already won. And Respondent's motion for sanctions against Charging Party likely compelled Charging Party to obtain legal counsel for that proceeding. We find sanctions appropriate in this circumstance, and, in addition to the requirements of the Compliance RDO, direct Respondent to pay the reasonable costs and attorneys fees incurred by Charging Party during the compliance hearing and as a result of Respondent's cross-exceptions.

⁴ Section 11(c) provides:

The Board's order may in its discretion also include an appropriate sanction, based on the Board's rules and regulations, and the sanction may include an order to pay the other party or parties' reasonable expenses including costs and reasonable attorney's fee, if the other party has made allegations or denials without reasonable cause and found to be untrue or has engaged in frivolous litigation for the purpose of delay or needless increase in the cost of litigation; the State of Illinois or any agency thereof shall be subject to the provisions of this sentence in the same manner as any other party.

BY THE LOCAL PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ Robert M. Gierut
Robert M. Gierut, Chairman

/s/ Charles E. Anderson
Charles E. Anderson, Member

/s/ Richard A. Lewis
Richard A. Lewis, Member

Decision made at the Local Panel's public meeting in Chicago, Illinois, January 13, 2015;
written decision issued in Chicago, Illinois on February 3, 2015.

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

Wayne Harej,)	
)	
Charging Party)	
)	Case No. L-CB-12-032-C
and)	
)	
Fraternal Order of Police, Lodge 7,)	
)	
Respondent)	

**ADMINISTRATIVE LAW JUDGE’S RECOMMENDED COMPLIANCE
DECISION AND ORDER**

On January 19, 2012, Wayne Harej (Charging Party or Harej) filed a charge with the Illinois Labor Relations Board’s Local Panel (Board) alleging that the Fraternal Order of Police, Lodge 7 (Respondent or FOP) engaged in unfair labor practices within the meaning of Section 10(b) of the Illinois Public Labor Relations Act (Act) 5 ILCS 315 (2012). The charge was investigated in accordance with Section 11 of the Act and on June 2, 2011, the Board’s Executive Director issued a Complaint for Hearing. The charge alleged that FOP violated the Act by failing and refusing to provide Harej with information concerning the manner in which it calculated the fair share fee assessment as paid by Harej and by failing and refusing to provide Harej with information concerning the manner by which he may object to the fair share fee calculation.

The Respondent failed to file a timely Answer to the Complaint and thereby admitted the material factual and legal allegations stated in the Complaint. On July 11, 2012, the Administrative Law Judge (ALJ) issued a Recommended Decision and Order directing FOP to take the following affirmative actions:

1. Provide Harej with information concerning the manner in which it has calculated the fair share fee assessment, as paid by Harej, and provide Harej with information concerning the manner by which he may object to the fair share fee calculation.
2. Notify the City of Chicago to cease the deduction of fair share fees from Harej until such time as the directive in paragraph (a) above has been followed.

3. Refund to Harej a sum in the amount of all his fair share monies collected after July 19, 2011, a date six months prior to the date on which the charge was filed, plus any interest on those fees if they were held in escrow by FOP.
4. Post, at all places where notices to employees are normally posted, copies of the notice attached hereto and marked "Addendum." Copies of this Notice shall be posted, after being duly signed, in conspicuous places, and be maintained for a period of 60 consecutive days. FOP will take reasonable efforts to ensure that the notices are not altered, defaced or covered by any other material.

On September 11, 2012, the Board's General Counsel issued an Order stating that the ALJ's RDO was final and binding on the parties.

On September 24, 2013, FOP filed a Notice of Compliance regarding the RDO. On October 11, 2013, Harej filed a response, disputing FOP's contention that it complied with the Order. The Compliance Officer construed Harej's response as a request for enforcement and referred the case to the undersigned for a hearing.

On May 22, 2014, the Compliance Officer issued a Compliance Order and Notice of Hearing. He observed that FOP provided no documentary evidence of compliance with any portion of the order and merely included a statement that it had in fact complied.

I. PRELIMINARY FINDINGS

The parties stipulate and I find:

1. At all times material, FOP has been a labor organization within the meaning of Section 3(i) of the Act.
2. The City of Chicago employed the Charging Party, Wayne Harej, as a Police Officer, until he retired on July 21, 2012.
3. While employed by the City of Chicago as a police officer, Harej had been a public employee within the meaning of Section 3(n) of the Act, until his retirement on July 21, 2012.
4. At all times while employed by the City of Chicago, Harej had been a member of a bargaining unit composed of all sworn Police Officers below the rank of Sergeant.
5. At all relevant times, the City of Chicago and the FOP have been parties to collective

bargaining agreements (Agreements) setting out terms and conditions of employment for employees within the Unit, including Harej, up to the time of his retirement on July 21, 2012.

II. ISSUES AND CONTENTIONS

The parties addressed the following two issues at hearing: (1) whether FOP complied with the notice posting requirement and (2) whether FOP provided Harej with the fair share fee calculations for the years 2006 through 2012.¹

FOP argues that it complied with the posting requirement by placing the notice on the second floor bulletin board of FOP headquarters. It claims that its posting at that location was reasonable, in line with its past practice, and consistent with the Board's Order. FOP contends that it should not be required to post notices at the 126 units of assignment. It asserts that it does not have control over those locations and suggests that posting there would impose a hardship. Further, it claims that mailing the notice to each member or posting the notice on its website would be a more efficacious way to distribute the information.

Next, FOP asserts that it provided Harej with documents describing the manner in which FOP calculates the fair share fee assessment. FOP further argues that it properly authenticated those documents through its witness, Robert Krone.

Finally, FOP moves for sanctions, arguing that Harej needlessly increased the costs of litigation. In support, FOP highlights Harej's allegedly frivolous arguments, his request for 11 subpoenas, and his attempts to have the ALJ reconsider her orders.

Harej argues that FOP failed to satisfy the notice posting requirement because FOP's posting location was not conspicuous and did not employ all the channels of communication customarily used by FOP to reach its members. Further, Harej claims that FOP did not prove that it maintained the posting for 60 days.

Next, Harej asserts that FOP did not properly authenticate the proffered documents because Krone did not prepare them all himself and could not remember which ones he prepared and which he merely reviewed.

In addition, Harej argues that the hearing should be reopened so that he may question

¹ FOP's compliance with respect to other aspects of the Order is also addressed in this decision but did not raise issues of fact for an oral hearing.

other witnesses and examine the methodology used by FOP to obtain the fair share fee calculation.²

Finally, Harej opposes FOP's motion for sanctions, arguing in relevant part that he did not engage in frivolous litigation and instead subpoenaed necessary witnesses.

III. FINDINGS OF FACT

1. Prehearing Documents and Communications

On May 30, 2014, FOP attorney Pat Fioretto sent a letter to the Board stating that he had recently been retained as counsel by FOP's new administration and that he planned to provide documentation responsive to the Compliance Order. He requested time to locate the relevant documents.

On June 18, 2014, I held a phone conference with the parties to narrow the issues for hearing. Following the conference, we exchanged numerous emails to clarify statements made during the call.

On July 15, 2014, Fioretto summarized FOP's position and the procedural history of the case in a letter to the Board. The letter included a number of attachments. The first attachment (Group Exhibit A) is a copy of a letter from former FOP attorney Clarke Devereux to former Harej attorney Michael Persoon, dated September 20, 2012. Attached to the letter was a computerized report of FOP financial transactions with Harej including check numbers, their amounts, and their dates of issuance. The letter states the following:

Dear Michael [Persoon]:

Per the July 11, 2012, Recommended Decision and Order in the above captioned matter, enclosed please find a refund to your client, Wayne Harej, which amounts to all his fair share fees collected after the date of July 19, 2011.

From the Date of July 11, 2012, to the date of your client's retirement, he received twenty-five paychecks from which a fair share fee of \$12.00 was deducted from each

² Harej also asserts that he should have been granted a continuance. As the hearing has already been held, this matter is not addressed below.

paycheck for a total amount of \$300.00 (Three Hundred Dollars and zero/100). In that these funds are held in a non-interest bearing account, there is no additional interest amount to be added to that figure.

Sincerely,
Clarke Devereux

The second attachment (Group Exhibit B) is entitled FOP Chicago Lodge # 7 Fair Share Spreadsheet. Fioretto asserted that these documents constituted FOP's fair share fee calculations for the years 2006-2013.³

The third attachment (Group Exhibit C) includes correspondence between Devereux and Harej. The first letter, dated June 13, 2013, is from Devereux to Harej and states the following: "Enclosed please find our current 'Notice to Fair Share Fee Payers.'" The second letter, dated August 5, 2013, is from Harej to Devereux. It acknowledges Harej's receipt of the first letter and states the following in relevant part: "In accordance with correspondence [d]ated June 13, 2013, initiated by FOP Lodge 7 Chicago, Attorney Clarke Devereux, I, Wayne Harej, wish to participate in a hearing, before a neutral arbitrator...to object to the fair share fee(s) determined by FOP Lodge 7 Chicago." The third letter, dated August 6, 2013, is from Harej to former FOP President Mike Shields. In relevant part, it informs Shields that Harej "filed a notice for arbitration of 'Fair Share Fees' as provided by the Illinois Labor Board." The fourth letter, dated August 7, 2013, is from Devereux to Harej and Shawn Hallinan, another fair share fee payer. It acknowledges their challenge to the FOP's fair share calculation and asserts that FOP will make a request to the Federal Mediation and Conciliation Service (FMCS) for the appointment of an arbitrator to consider the matter.

On July 29, 2014, I held another phone conference to discuss the documents produced by FOP and to narrow the issues for hearing.

Sometime thereafter, Harej requested 11 subpoenas from the Board. The Board issued them on July 31, 2014. Harej also informally requested documents from FOP at around this time.

On August 7, 2014, Harej requested a continuance to accommodate the schedule of a

³ Fioretto emailed these documents to Harej and me earlier, on June 23, 2014.

proposed witness, former FOP attorney Clarke Devereux, who was unavailable on the set hearing date. Harej also wished to allow FOP time to respond to his document request. I denied the request for a continuance on the following two grounds. First, FOP asserted it had provided all documents relevant to Harej's request. Second, the testimony that Harej sought from Devereux was not relevant to the issues for hearing.⁴

On August 9, 2014, FOP moved for sanctions against Harej on the basis that he had engaged in frivolous litigation.

On August 11, 2014, FOP filed a response to Harej's motion to continue the hearing. That day, Harej moved for reconsideration of my ruling to deny his request to continue the hearing. I denied the motion.

Approximately a week prior to the scheduled hearing date, Harej retained attorney James Lessmeister. On August 18, 2014, Lessmeister requested a continuance so that he could adequately respond to FOP's pending motion for sanctions. FOP objected to the request. I denied the request for a continuance, but granted Lessmeister an extension to respond to the motion until the filing of the post-hearing briefs.

2. Testimony at hearing, August 21, 2014

FOP has a large bulletin board on the second floor of its three-story headquarters, which it uses to post notices from the Board and information concerning local, state, and federal employee guidelines. Officers who attend FOP monthly meetings on the first floor have access to the second floor.⁵ Long-time FOP employee and office manager Katherine Moore testified that she holds meetings with officers in her office on the third floor. Throughout Moore's 18 year career at the FOP, she has met with 30,000 officers in her office.

There are bulletin boards at the City's 22 police stations, where some officers report to work. Moore specified that there are also bulletin boards at some of the 104 satellite units of assignment.⁶ According to Moore, the City of Chicago only prohibits FOP from posting notices

⁴ According to Harej, Devereux would testify to "all aspects of Harej's fair share charges." As I noted in my email ruling, the charges themselves are not at issue in this case.

⁵ Approximately 150 officers attend each meeting, but there were no meetings in July and August.

⁶ Moore mentioned that there were bulletin boards at the reporting locations for the bomb and arson unit, the airport unit, the troubled buildings unit, the marine unit, the narcotics unit, and the organized crime unit.

on City bulletin boards if they mention alcohol, the price of admission to an FOP function, or an employee's termination.

When Harej was an FOP union representative, he posted union notices on the bulletin boards at the locations to which he reported to work. He served as the unit representative for the 15th District for 2002 to 2004. He served as the unit representative for the bomb and arson unit from April 2004 to September 2005.

The most recent collective bargaining agreement between the City of Chicago and the FOP contains a provision addressing bulletin boards. It states that "the Employer shall provide the Lodge with designated space on available bulletin boards, or provide bulletin boards on a reasonable basis, where none are available, upon which the Lodge may post its notices." See Article 14 (2007-2012 CBA). That collective bargaining agreement remains "in full force and effect" now, during the parties' negotiations for a successor agreement. See Section 28.2 (2007-2012 CBA).⁷

The FOP also communicates with its members through its newsletter, which is mailed monthly to its active members. The newsletter includes articles, information concerning member benefits, and party announcements. FOP likewise communicates with its members through its website, which is updated a couple times a week. The website includes the FOP's newsletters, collective bargaining agreements, and information on FOP committees. Finally, FOP has a Facebook page that reports on officer shootings and contains updates on City Council meetings.

Moore testified that FOP posted the Board's notice in the instant case on the second floor bulletin board of FOP headquarters for a few months during the summer of 2013. Moore could not remember whether the notice was signed or dated.

The Board has required FOP to post a notice on two prior occasions. In both cases, FOP posted the notice on the second floor bulletin board of FOP headquarters. No party objected to the sufficiency of the posting or instituted compliance proceedings with the Board.

Robert Krone, partner at accounting firm Sasseti LLC, testified that his firm created FOP's fair share calculations for the years 2006 to 2013. He stated that he either prepared the fair share calculations himself or reviewed the fair share calculations made by an assistant. He then identified the documents introduced into the record by FOP as the fair share calculations prepared by his firm. Krone could not remember which calculations he performed and which he

⁷ I take administrative notice of these facts.

merely reviewed.

IV. DISCUSSION AND ANALYSIS

1. FOP's Compliance with the Notice Posting Requirement

FOP did not comply with the Board's Order to post a notice because FOP's posting was not conspicuous, was too limited in scope, and was neither dated nor signed.⁸

First, there is insufficient evidence that FOP posted the notice in "conspicuous places," as required by the Order. A conspicuous posting, by definition, is one that attracts notice or attention. Necessarily, a posting attracts little attention if it is located in a spot frequented by relatively few people. In this case, there was little evidence concerning the number of police officers who frequent the second floor of FOP headquarters. Moore's testimony concerning the number of employees who frequent her offices on the third floor is irrelevant to second floor traffic. Moreover, the numbers that Moore quoted concerning traffic in the building, more generally, do not speak to the number of police officers who visit the second floor. Thus, FOP's posting on the second floor of FOP headquarters does not further the policies of the Act where there is no indication that a substantial number of police officers would go to that location and see the notice. J & R Flooring, Inc., 356 NLRB No. 9, 2 (2010) ("notices must be adequately communicated to the employees or members affected by the unfair labor practices").

Second, FOP's chosen posting location was too limited in scope because FOP should also have posted the notice on its website and on worksite bulletin boards made available by the City for FOP notices. The Board's order requires FOP to post at "*all* places where notices to employees are normally posted." (emphasis added). Here, FOP does not post notices only on the second floor bulletin board at its headquarters. FOP concedes that it also customarily posts notices to employees on its website. Further, the evidence reasonably indicates that FOP likewise posts notices on bulletin board space reserved for FOP postings by the City of Chicago. Harej confirmed that he posted union notices at his worksite bulletin boards in his capacity as FOP representative between 2002 and 2005. The most recent FOP/City of Chicago collective bargaining agreement reasonably confirms the maintenance of such a practice. It requires the City to designate space for FOP notices on existing bulletin boards and to provide FOP with

⁸ There is sufficient evidence that FOP posted the notice for the required 60 days. However, FOP's compliance with this portion of the notice-posting requirement is immaterial where the posting was defective in every other respect.

bulletin boards, if there are none. That contractual mandate would serve no purpose if FOP did not use the bulletin boards as a primary means of communicating with its members. Thus, FOP's posting on the second floor of FOP headquarters does not comprise "all places" at which notices to employees or members are posted because it omits posting at other, customary posting locations. J & R Flooring, Inc., 356 NLRB at 2 (requiring posting electronically—in addition to physical posting—where the respondent customarily used electronic posting to communicate with its employees' or members).

FOP's posting was additionally flawed because there is insufficient evidence that it included a signature and a date, as required by the Order. Indeed, Moore could not remember whether the notice had been signed or dated.⁹

Under these facts, FOP's previously unchallenged practice of posting Board notices on the second floor of FOP headquarters does not excuse its failure to post more broadly. A reasonable construction of the Order illustrates that FOP must treat the Board's notice in the same manner as it treats its other notices to its members. The Order does not limit the term "notices" to ones issued by the Board. Instead, the Board's use of the word "normally" suggests that FOP must publicize the Board's notice using its customary means of communicating notices to its members. See Id. at 4 (NLRB considers the manner in which the respondent customarily communicates with its employees or members in determining the scope of the posting requirement). Thus, FOP cannot establish limited placement of Board notices and use that unexamined practice to justify hiding the notice on the second floor of its headquarters.¹⁰

Further, FOP's claimed hardship of posting at the worksite bulletin boards is undercut by the very practice that justifies a requirement to post there. The evidence reasonably indicates that FOP representatives routinely visit worksite bulletin boards to post other announcements. Thus, posting and maintaining Board notices at those same locations presents no extraordinary effort. Id. at 3 (electronic posting requirement did not impose an unreasonable burden where the respondent customarily used electronic means of communicating with its members/employees).

Next, FOP's proposals to limit the posting to its website or to simply mail the notice to its members must be rejected as untimely attempts to modify the Board's Order. The Board's Order requires FOP to post the notice at "all the places" where notices are normally posted. As

⁹ Claude Devereux's affidavit likewise sheds no light on this issue.

¹⁰ This is the first occasion on which the Board has reviewed FOP's notice-posting practices.

discussed above, the evidence reasonably indicates that FOP normally posts notices on the worksite bulletin boards in addition to posting notices on its website. Nevertheless, FOP advocates for alternate methods of posting and thereby seeks to retroactively appeal the Board's Order. See *Id.* at 2- 4 (authorizing posting by multiple means of communication where multiple means are used by the Respondent to communicate with employees or members). Yet, the time to file exceptions to the ALJ's Order is well past and FOP's arguments are therefore unavailing. 80 Ill. Admin. Code 1200.135(b)(1)(in unfair labor practice cases, exceptions must be filed no later than 30 days after service of the RDO); but see Paxton-Buckley-Loda Educ. Ass'n, 304 Ill. App. 3d 343-355 (4th Dist. 1999) (requiring mailing as method to notify employees of unfair labor practice where Board's Order specifically required Respondent to mail the notice).

Thus, FOP failed to comply with the Board's notice-posting requirement. It must do so by posting a signed and dated notice for 60 days on its website and on worksite bulletin boards, made available by the City for use by the FOP.¹¹

2. Remaining requirements

FOP complied with all the remaining requirements of the Board's Order, as described below.

First, FOP provided Harej with documents concerning the manner in which FOP calculates its fair share fees, and Krone sufficiently authenticated them. A proponent may establish the identity of a document "through the testimony of a witness who has sufficient personal knowledge... that a particular item is, in fact, what its proponent claims it to be." Piser, 405 Ill. App. 3d at 349 (internal quotes omitted). Here, Krone had personal knowledge concerning the identity of the documents because he either created them or reviewed and oversaw their creation. It is unimportant that Krone could not remember which calculations he oversaw and which he performed himself because he had a hand in all of them.

Further, there no dispute that FOP provided Harej with information concerning the manner by which he could object to the fair share fee calculation. FOP provided Harej with a

¹¹ A Facebook posting is not required because FOP does not "normally" post notices on Facebook; it uses its page solely to inform employees about shootings and City Council meetings. Further, a mailed notice is not required because a mailing is not the ordinary means of informing employees of an unfair labor practice. See Paxton-Buckley-Loda Educ. Ass'n, 304 Ill. App 3d 343-355 (4th Dist. 1999) (mailing is an "extraordinary" remedy); Three Sisters Sportswear Co., 312 NLRB 853, 880 (1993) (requiring mailing in addition to posting where the unfair labor practice was flagrant and extensive).

notice to that effect on June 13, 2013¹² and again on June 17, 2013. In fact, Harej introduced it into evidence as Charging Party Exhibit 5.

Likewise, FOP provided Harej with a sum in the amount of all his fair share monies collected after July 19, 2011. It is undisputed that Harej received a check for \$1680 from FOP, which is \$1380 more than the \$300 to which he was entitled.

Finally, there is no dispute that FOP complied with the requirement to notify the City to cease deducting Harej's fair share fees; Harej never claimed otherwise.

Thus, FOP complied with the Board's Order to the extent that it required FOP to provide Harej with the information specified in the Order, to repay Harej's fair share fees, and to inform the City that fair share fees should no longer be deducted.

3. Harej's Request to Reopen the Hearing

Harej seeks to reopen the hearing for the following reasons: (1) to call Doreen Plachta to rebut the authenticity of the fair share calculation, established by witness Krone; (2) to question former FOP attorney Clarke Devereux; and (3) to examine the methodology used by FOP in calculating the fair share fees. The request is denied on all grounds, as discussed below.

First, Harej failed to indicate how Plachta's testimony would be relevant to the authenticity inquiry. When asked to provide an offer of proof, counsel did not describe what Plachta would say. He simply reasserted his conclusion that Plachta was the FOP liaison to Sasseti LLC and that "her testimony would be relevant in terms of the authenticity of the information [and] the background of it."

Second, Devereux's testimony is unnecessary. First, there is no need to cross examine Devereux on his affidavit because the affidavit was not admitted into evidence in lieu of testimony; in fact, it was not relied upon at all. Further, Devereux's testimony concerning his statements to the Compliance Officer would not shed light on whether FOP did in fact comply with the Board's Order. Finally, any testimony offered by Devereux concerning FOP's notice posting practices would likely be duplicative of that offered by Moore.

Finally, an examination of FOP's methodology for calculating the fair share fees is outside the scope of these proceedings. Rather, the only matter at issue here, in relevant part, is whether or not FOP provided Harej with information concerning the manner in which it

¹² See FOP's pre-hearing proffer of documents.

calculates fair share fees.

Thus, the motion to reopen the hearing is denied.

4. FOP's Motions for Sanctions

The FOP's motion for sanctions is denied because awarding sanctions in this case is inequitable.

Section 11 (c) of the Act provides that the Board has discretion to include an appropriate sanction in its order if a party has made allegations or denials without reasonable cause and found to be untrue, or has engaged in frivolous litigation for the purposes of delay or needless increase in the cost of litigation. The Act does not expressly confine the award of sanctions to the prevailing party; however, the Board in one case has referenced such a limitation. Cnty. of Cook (Dep't of Cent. Serv.), 17 PERI ¶ 3009 (IL LRB-LP 2001) ("the Board may reimburse prevailing parties" for costs and fees of litigation).¹³ Further, the Board has never addressed the propriety of awarding sanctions against a prevailing charging party in a compliance proceeding.

The procedural posture of this case weighs against the imposition of sanctions. Harej, the party against whom sanctions are sought, is not only twice prevailing but twice aggrieved. FOP did not simply violate the Act in the underlying case; it also subsequently failed to comply with the Board Order that sought to remedy the violation. Granting FOP's motion for sanctions against Harej under such circumstances adds insult to injury.

Further, sanctions must be denied even upon strict application of the legal test set forth in Section 11(c) of the Act. Inherent to a finding of frivolous litigation is a determination that the sanctioned party acted in bad faith, i.e., "for the purposes of delay or needless increase in...costs." 5 ILCS 315/11(c); see also Chicago Transit Auth., 16 PERI ¶ 3021 (IL LRB-LP 2000); Cnty. of Cook, 15 PERI ¶ 3001 (IL LLRB 1998)(Board must determine whether the party's defenses to the charge were not made in good faith or did not represent a "debatable" position"); see also Cnty. of Cook and Sheriff of Cook Cnty., 12 PERI ¶ 3008 (IL LLRB 1996); City of Markham, 11 PERI ¶ 2019 (IL SLRB 1995). There is little indication here that Harej acted in bad faith when he subpoenaed many witnesses, moved for the reconsideration of rulings,

¹³ The language quoted was written by then-ALJ John Brosnan. However, the Board adopted his decision.

and attempted to broaden the scope of proceedings. Rather, his conduct simply demonstrates the frustrations of a persistent pro se party seeking justice without the benefit of legal training.¹⁴

For these reasons, FOP's motion for sanctions is denied.

V. CONCLUSIONS OF LAW

FOP did not comply with the Board's Order because it did not satisfy the notice posting requirement.

VI. RECOMMENDED ORDER

FOP must post, at all places where notices to employees are normally posted, copies of the notice attached hereto and marked "Addendum." Copies of this Notice shall be posted, after being duly signed, in conspicuous places, and be maintained for a period of 60 consecutive days. FOP will take reasonable efforts to ensure that the notices are not altered, defaced or covered by any other material.

The posting requirement in this case requires FOP to post the Board's notice at worksites, on the bulletin board space contractually provided for the FOP's use by the City of Chicago, and on its website.

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 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, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. Exceptions, responses, cross-

¹⁴ Harej obtained an attorney approximately one week before hearing and repeated some of his earlier requests. Yet, it is clear that FOP's primary gripe is with Harej's conduct prior to the date on which he obtained representation because FOP filed its motion for sanctions before Harej retained an attorney.

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 29th day of October, 2014

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

/s/ Anna Hamburg-Gal

**Anna Hamburg-Gal
Administrative Law Judge**