

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

Gerard H. Henderson,)	
)	
Charging Party)	
)	
and)	Case No. L-CB-12-038
)	
Illinois Fraternal Order of Police)	
Labor Council,)	
)	
Respondent)	

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

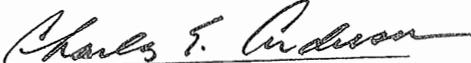
On May 24, 2012, Acting Executive Director Jerald S. Post dismissed the unfair labor practice charge filed by Gerard H. Henderson (Charging Party) in the above-referenced case. The Charging Party alleged that the Illinois Fraternal Order of Police Labor Council (Respondent) engaged in unfair labor practices within the meaning of Section 10(b) of the Illinois Public Labor Relations Act, 5 ILCS 315/10(b) (2010), when Respondent agreed with Charging Party's employer to lay him off instead of less senior employees in the same job classification.

The Charging Party filed a timely appeal of the Executive Director's Dismissal pursuant to Section 1200.135(a) of the Board's Rules and Regulations, 80 Ill. Admin. Code §1200.135(a). Respondent filed a timely response. After reviewing the record, appeal and response, we uphold the Executive Director's Dismissal for the reasons articulated in that document.

BY THE LOCAL PANEL OF THE ILLINOIS LABOR RELATIONS BOARD



Robert M. Gierut
Chairman



Charles E. Anderson
Board Member



Richard Lewis
Board Member

Decision made at the Local Panel's public meeting in Chicago, Illinois, on August 14, 2012;
written decision issued at Chicago, Illinois, August, 22, 2012.

parties to a collective bargaining agreement (CBA), which provides for a grievance procedure culminating in arbitration.

In or around February 2011, the Cook County Board proposed a reorganization of the services provided by Oak Forest Hospital. The hospital would no longer be a full service hospital, but would become an urgent care and out-patient center. The proposed reorganization would also require the layoff or re-assignment of certain hospital personnel, including, Public Safety Department employees.

Since on or about February 18, 1992, Henderson has been employed by Respondent as a Public Safety Officer I at its Oak Forest Hospital. On or about July 28, 2011, Henderson was notified that he would be temporarily transferred to John H. Stroger, Jr. Hospital. He was cautioned that if he rejected the temporary transfer, he would be laid off. Henderson elected to accept the transfer, but later noticed that certain PSO I's with lesser seniority were not subject to transfer to Stroger.

Henderson claims that on or about March 16, 2011, bargaining unit president Lorenzo Esqueda, and bargaining unit vice president Lorenzo Rice, and FOP Business Agent Richard Stomper met with County human resources and labor relations personnel to discuss potential layoffs of PSO I personnel, and to develop a roster of PSO I's, to be determined by date of hire and whether the employee had also been certified as Firefighter II (FFII). Charging Party alleges that the County created two PSO I seniority lists, one listing all PSO I's only by original date of hire, and a second, listing PSO I's by date of hire and possession of FFII certification. Utilizing the first list of 24 PSO I's, Henderson is ranked third; utilizing the second list, he is ranked at or near the bottom. Henderson asserts that the use of the second list is discriminatory. He contends that the County violated Article XII, Section 12.1 and 2 of the CBA which provides that seniority shall be computed based on the most recent date of hire, and that layoffs shall be by inverse order. Rehire or recall after layoff shall be by seniority, but is conditioned upon the employee's ability to perform the job.

Henderson also cites Article XV, Section 15.1 of the current CBA (effective December 1, 2008 to November 30, 2011), which provides that the Employer agrees to continue to provide FFII training to all

covered employees, and shall do so until all covered employees are certified by the Fire Marshall's Office of the State of Illinois; covered employees shall have one year from the effective date of this agreement, December 1, 2008, to achieve their FFII certification.³ Henderson claims that over the twenty years that he has been employed as a PSO I, he has been denied FFII training, in violation of the CBA. Nevertheless, he has been required to perform fire prevention and suppression duties in accordance within the job description of PSO I.

On or about October 28, 2011, Henderson received notice of lay off, effective December 1, 2011. On December 1, 2011, FOP filed a grievance on behalf of all PSO I's affected by the layoff, seeking their reinstatement.⁴ On January 18, 2012, the grievance was advanced to a step three meeting. FOP argued that Henderson and the others were laid off out of seniority order in violation of the CBA. Moreover, the FOP contends that because of their collective experience, their FFII status should be grandfathered, or recognized as equivalent achievement. The County denied the grievance, asserting that those PSO I's who were laid off lacked the required FFII certification, while those PSO I's who were retained were so certified. Resolution of the grievance is pending, and FOP continues to secure re-employment for Henderson into open Public Safety positions.

II. DISCUSSION AND ANALYSIS

In duty of fair representation cases, a two-part standard is used to determine whether a union has committed intentional misconduct within the meaning of Section 10(b)(1). Under that test, a charging party must establish that the union's conduct was intentional and directed at charging party, and secondly, that the union's intentional action occurred because of and in retaliation for charging party's past actions, or because of charging party's status (such as his or her race, gender, or national origin), or because of animosity between charging party and the union's representatives (such as that based on personal conflict or charging party's dissident union support). The Board's use of this standard, based on Hoffman v. Lonza,

³ The investigation of this charge determined that this identical requirement is contained in previous CBA's dating back more than twelve years, to December 1, 1998.

⁴ See Case Nos. L-CA-12-039, William Sewell and County of Cook; L-CB-12-037, William Sewell and FOP; L-CA-12-046, Darryl Johnson and County of Cook; L-CB-12-039, Darryl Johnson and FOP.

Inc., 658 F.2d 519 (7th Cir. 1981), was affirmed by the Illinois Appellate Court in Murry v. American Federation of State, County and Municipal Employees, Local 1111, 305 Ill. App. 3d 627, 712 N.E.2d 874, 15 PERI ¶4009 (1st Dist. 1999), affg American Federation of State, County and Municipal Employees, Local 1111 (Murry), 14 PERI ¶3009 (IL LLRB 1998).

Under Section 6(d) of the Act, the exclusive representative has a wide range of discretion in grievance handling, and as the Board has previously held, a union's failure to take all the steps it might have taken to achieve the results desired by a particular employee does not violate Section 10(b)(1), unless as noted above, the union's conduct appears to have been motivated by vindictiveness, discrimination, or enmity. Outerbridge and Chicago Fire Fighters Union, Local 2, 4 PERI ¶3024 (IL LLRB 1988); Parmer and Service Employees International Union, Local 1, 3 PERI ¶3008 (IL LLRB 1987). In this case, there is no evidence that FOP intentionally took any action either designed to retaliate against Henderson or the others, due to their status, or because of personal animosity or dissident union activity. Other than their assertions that FOP met with the County to develop what they considered a flawed seniority list, Henderson and the others tendered nothing in support of the claim that FOP singled him out for retaliation because of status or past actions. In fact, two other PSO I's formerly working at Oak Forest were also laid off because of their failure to achieve FFII certification within the time frame allotted by Article XV of the CBA. Furthermore, the investigation indicated that the Union filed a grievance when it determined that unit members would be harmed by the County's actions, and advanced it in an effort to secure re-employment. As there is no evidence indicating that the Union was unlawfully motivated, Henderson has failed to present grounds upon which to issue a complaint for hearing.

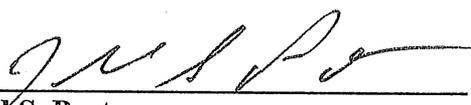
III. ORDER

Accordingly, the instant charge is hereby dismissed. Charging Party may appeal this dismissal to the Board at any time within 10 calendar days of service hereof. Any such appeal must be in writing, contain the case caption and number, and be addressed to the Board's General Counsel, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103. Appeals will not be accepted in the Board's

Springfield office. In addition, any such appeal must contain detailed reasons in support thereof, and the party filing the appeal must provide a copy of its appeal to all other persons or organizations involved in this case at the same time the appeal 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 a copy of the appeal has been provided to each of them. An appeal filed without such a statement and verification will not be considered. If no appeal is received within the time specified herein, this dismissal will become final.

Issued in Chicago, Illinois, this 24th day of May, 2012.

**STATE OF ILLINOIS
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Jerald S. Post
Acting Executive Director