

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

Markham Professional Firefighters Association, IAFF, Local 3209,)	
)	
Charging Party)	
)	
and)	Case No. S-CA-09-001-C
)	
City of Markham,)	
)	
Respondent)	

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

On September 23, 2011, Administrative Law Judge (ALJ) Sharon B. Wells issued a Recommended Compliance Decision and Order (Compliance RDO) in the above-captioned matter, recommending that the Illinois Labor Relations Board, State Panel, find that the City of Markham (Respondent) had failed to comply with an earlier Board order. ALJ Wells ordered the Respondent to take certain affirmative actions and to reimburse the Markham Professional Firefighters Association, IAFF, Local 3209 (Charging Party) for its costs and reasonable attorney's fees relating to compliance proceedings. Respondent filed exceptions to ALJ Wells' Compliance RDO, pursuant to Section 1200.135 of the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code §1200.135. Charging Party filed a response. After reviewing the original order issued concerning the merits in this case, the Compliance RDO, exceptions, supporting brief, and response, we adopt the ALJ's Compliance RDO with only a slight revision. Our reasons follow.

Merits determination

On May 29, 2009, after considering the evidence presented in support and opposition of the unfair labor practice complaint issued in the above-captioned matter, ALJ Ellen Maureen Strizak issued a Recommended Decision and Order (Merits RDO) finding Respondent violated Section 10(a)(4) and (1) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010) as amended (Act), by failing to timely remit to Charging Party dues and fair share fees collected through payroll deductions and by unilaterally ordering Charging Party to remove Charging Party's file cabinet from Respondent's Fire Station No. 2. She also found Respondent violated Section 10(a)(2) and (1) of the Act by issuing an employee an unsatisfactory evaluation. She ordered Respondent to cease and desist from certain activities and to take certain affirmative actions, including: timely remitting of dues and fair share fees as provided in the collective bargaining agreement, paying interest, allowing the Charging Party to return its file cabinet to Fire Station No. 2, posting standard notices, and within 20 days notifying the Board in writing of the steps it had taken to comply. Respondent did not file exceptions to the Merits RDO, and the Board declined to review the matter on its own initiative, so on August 26, 2009, the Board's Acting General Counsel issued an order noting these facts and that the Merits RDO was non-precedential, but binding on the parties.

Compliance proceedings

On September 3, 2009, Charging Party asked Respondent to comply with the Merits RDO, specifically referencing the directions with respect to the dues deductions and the file cabinet. On October 29, 2009, Charging Party petitioned the Board for enforcement, again referencing these two items, and on February 2, 2010, Charging Party notified the Board that Respondent had failed to comply with the Merits RDO. On May 21, 2010, it clarified that

Respondent had complied with respect to making the employee whole and with respect to placement of the cabinet, but not with timely remittance of union dues. On June 1, 2010, it advised that it was willing to accept placement of its file cabinet at Fire Station No. 3 rather than Fire Station No. 2 as required by the Merits RDO.

On July 20, 2010, the Board's compliance officer, Michael L. Dunne, issued a Compliance Order, ordering Respondent to comply with the Merits RDO (specifically with the remittance of dues and fair share fees) and to do so within 10 days. The Compliance Order indicated it was an interim order and that, if Respondent did not comply, ALJ Sharon B. Wells would conduct a compliance hearing. Ten days later, on July 30, 2010, Respondent filed a report of compliance in which it stated that, before the Merits RDO had even issued, it had agreed to pay all dues arrearages and to disburse in advance the average amount of dues deducted and remitted over the prior 12-month period. It also stated the following, the last sentence of which plays a significant role in one of the issues now pending before us:

2. Because the provision of the collective bargaining agreement that requires the City of Markham to "remit dues collected within [']10 days[']" was entered into at a time the City of Markham prepared its payroll in-house, this provision was easily manageable by the Treasurer's Office at the time. The City of Markham, like most villages and municipalities, however, now out-source [sic] the payroll responsibilities to a professional payroll service company like ADP, which provides "monthly" payroll reporting. As a result of this administrative payroll change, the City of Markham has, as a practice, waited until the monthly payroll disbursement reconciliation report is received before remitting the amount of union dues deducted. Additionally, because the Union has consistently refused to submit an invoice or demand for any certain amount owed, the approved "bill list" submitted bi-weekly to the Markham City Council by the Treasurer, has not included the remittance payment owed to the Union.

3. Upon receipt of this Compliance Order, counsel for the City of Markham requested the Union submit or advise of the specific amount owed. As of this date, no information o[f] the alleged amount owed by the City of Markham has been provided by the Union. The City of Markham has also agreed to pay "in advance," the average, one-month amount of dues routinely deducted by the City of Markham. This proposal was rejected by the Union. Instead, the Union has demanded the City of Markham, prepare a special payment ... "within 10-days"

of each payday, to remit the amount owed. **For accounting reasons, the City of Markham has found it impossible to consistently comply with this express language of the collective bargaining agreement.** (Emphasis supplied).

ALJ Wells conducted a hearing on October 13, 2010. One week before the hearing, the Union filed a motion to amend the issues for consideration, stating its agreement to accept placement of its file cabinet in Fire Station No. 3 had been premised on an assumption that it would be placed in an office area, not, as Respondent insisted, in the engine bay area. ALJ Wells granted that motion at the hearing, and also denied Respondent's motion to vacate the compliance hearing. Ultimately, ALJ Wells found that Respondent had failed to comply with the dues remittance and file cabinet restoration components of the Merits RDO. She also granted Charging Party's motion to issue sanctions. She ordered Respondent to timely cease and desist from various activities, to post the standard notices, and to take the following other affirmative acts: 1) remit dues and fair share fees as provided in the collective bargaining agreement; 2) pay interest for all dues deducted since January 11, 2008; 3) permit Charging Party to return the file cabinet to Fire Station No. 2; and 4) reimburse Charging Party for its costs and reasonable attorney's fees relating to the compliance proceeding.

Evidence

The evidence shows the file cabinet had been in an office area in Fire Station No. 2 until a fire at that station caused it to be temporarily placed in the engine bay area, then at the union local president's home. Remodeling at Fire Station No. 2 still provided office space that could accommodate the file cabinet, but the precise location where the file cabinet had previously stood had been turned into a room with two beds and no office desks. The deputy fire chief informed the local president that he and the chief had decided the only place for the file cabinet was the engine bay at Fire Station No. 3, a location the local president found unacceptable

because of the possibility its contents could become wet while the engines or the floor and walls of the engine bay were being washed.

The evidence unequivocally demonstrates that Respondent has been deducting dues and fair share fees from employees' paychecks and remitting them to Charging Party, but not remitting them within 10 days as required by the collective bargaining agreement. Currently, each Wednesday before bi-weekly paychecks are due, Respondent's payroll clerk, Rashonda Lewis, submits payroll information—hours worked and pay due—to ADP, a private payroll service, which deducts union dues and fair share fees, prints the payroll checks, and submits them to Respondent on Fridays. With the payroll checks, ADP submits reports regarding the amounts deducted from each employee's pay. A record of those deductions is given to each employee on a monthly basis. Also on a monthly basis, Lewis makes a copy of the information on the reports, adds the amounts together, prepares remittance checks for AFLAC, MetLife, the police and fire pension systems, and Charging Party, has the mayor and treasurer sign those checks, and sends them to the payees or, with respect to Charging Party, to its bank, Bank Financial. To Lewis's knowledge, there is nothing that would prevent her from issuing those checks more frequently than once a month. She could, for example, issue checks every two weeks.

Respondent's exceptions

Respondent filed exceptions to 13 specific statements made in the Compliance RDO, but presents arguments pertaining only to the location of the file cabinet and the imposition of sanctions. Regarding the file cabinet, it first claims a management right analogous to an employer's right to specify the location of a union bulletin board. Regardless of its potential merit, this argument should have been raised in exceptions to the Merits RDO issued by ALJ

Strizak, not to the Compliance RDO issued by ALJ Wells. It would be inappropriate for us to consider this substantive argument at this late point in time. The argument has been waived. 80 Ill. Admin. Code §1200.135(b)(2).

Respondent next notes that the cabinet's prior exact location at Fire Station No. 2 was no longer an office and argues it was error for the ALJ to rule the union had to agree to its new location. That misstates the issue presented. Both the Merits RDO and the Compliance RDO require Respondent to: "Rescind the unilateral directive to remove the Union file cabinet from Station No. 2 and permit the [Union] to return the Union file cabinet to that location." The question presented to us is whether placing the file cabinet in an engine bay in Fire Station No. 3 complied with the Merit RDO's requirement to restore the cabinet to a location within Fire Station No. 2. We agree with ALJ Wells' determination that under the facts of this case, such placement is not in compliance. We need not consider whether placement in some specific location within Fire Station No. 2 complies with the Merits RDO because that situation has not been presented to us. All we are finding here today is that placement of the file cabinet in the engine bay area of Fire Station No. 3 is not in compliance with the order to restore placement at Fire Station No. 2.

Respondent also argues it was error for ALJ Wells to summarily issue sanctions simply because it refused to allow Charging Party to dictate the exact location of the file cabinet, but, again, that misstates her ruling. ALJ Wells did not issue sanctions regarding placement of the file cabinet, but because of Respondent's arguments regarding late remittance of dues.

Lastly regarding the file cabinet, Respondent claims it was unfair to impose sanctions against it without a fair opportunity to respond. Again we note sanctions were not imposed relating to the file cabinet issue. Furthermore, while Charging Party's motion to amend was

submitted only one week before the hearing, the issue is so factually simple that preparation would have required minimal effort by counsel and could easily have been accomplished within that time frame. Respondent was not unduly prejudiced by consideration of this issue, and the alternative of postponing or bifurcating the hearing would have resulted in an egregious waste of the Board's resources and the parties' time. We find all Respondent's exceptions and arguments with respect to the order on placement of the file cabinet to be without merit.

Respondent did not except to the Compliance RDO's determination regarding remittance of dues, but did except to the imposition of sanctions. It claims, contrary to ALJ Wells' finding, that it never argued it was impossible to remit the dues within 10 days, but only that it had a reasonable rationale for not doing so. It then quotes from the two paragraphs of its report of compliance referenced above at pp. 3-4, including an admission that it "has, as a practice, waited until the monthly payroll disbursement reconciliation report is received before remitting the amount of union dues deducted." But Respondent neglects to include the portion referenced by the ALJ and highlighted above that states: "For accounting reasons, the City of Markham has found it impossible to consistently comply with this express language of the collective bargaining agreement."

Respondent also states, contrary to ALJ Wells' finding, that Lewis never testified she could have remitted dues bi-weekly rather than monthly, following that statement with two quotations of her testimony that suggest that very thing. It then states that when the payroll function was outsourced, remittance of the union dues became an ADP function. That is flatly contradicted by the testimony of Lewis who stated that she remits the checks to Charging Party's bank, and does so by adding the figures from the reports ADP submits with the bi-weekly checks to obtain the monthly totals: "I will get the report back with the payroll checks." "I go through

the report and I pull out the section that I need. I make copies. And then on a monthly basis, I add them together and begin issuing the checks out.” Lewis’ testimony, considered as a whole, clearly establishes that Respondent is fully capable of complying with the dues remittance provisions of the collective bargaining agreement.

Section 11(c) of the Act permits the Board to impose sanctions for allegations or denials made without reasonable cause and found to be untrue, 5 ILCS 315/11(c) (2010), and courts have affirmed the Board’s imposition of sanctions where at hearing an employer’s witness asserted false, never before alleged, reasons for disciplining an employee, City of Bloomington v. Ill. Labor Relations Bd., 2011 IL App (4th) 100,778. Here, we do not merely have a layman witness providing false testimony, but counsel asserting, long after the time for filing exceptions to the Merits RDO and consequently long after becoming familiar with the case, that compliance was an accounting impossibility when the record clearly shows it was not. We find no error in ALJ Wells’ imposition of sanctions under these circumstances.

Moreover, in its arguments before us, Respondent chiefly relies on misstating the issues, misstating the record concerning its prior assertions, and misstating the testimony of its key witness. Not only is this tactic ineffective, we find it has needlessly prolonged resolution of this matter. Consequently, we modify the Compliance RDO to include a requirement that the Respondent reimburse the Charging Party for the costs and reasonable attorney fees expended to respond to the exceptions.

Conclusion

We adopt ALJ Wells’ Compliance RDO and add that Respondent shall reimburse Charging Party for the costs and reasonable attorney fees expended to respond to the exceptions.

Order

The City of Markham, its officers and agents, shall

1. Cease and desist from
 - a. Failing to timely remit dues and fair share fees collected through payroll deduction to the Markham Professional Firefighters Association, IAFF, Local 3209 as provided for in the collective bargaining agreement.
 - b. Failing to pay interest on all dues which have been deducted since January 11, 2008 and have been remitted late.
 - c. Failing to rescind the unilateral directive to remove the Union file cabinet from Station No. 2.
 - d. In any like or related manner, interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them in the Act.
2. Take the following affirmative action designed to effectuate the policies of the Act:
 - a. Timely remit dues and fair share fees collected through payroll deduction to the Markham Professional Firefighters Association, IAFF, Local 3209 as provided for in the collective bargaining agreement.
 - b. Pay interest on all dues which have been deducted since January 11, 2008 and have been remitted late.
 - c. Rescind the unilateral directive to remove the Union file cabinet from Station No. 2 and permit the Markham Professional Firefighters Association, IAFF, Local 3209 to return the Union file cabinet to that location.
 - d. Reimburse the Markham Professional Firefighters Association, IAFF Local 3209, for its costs and reasonable attorney's fees incurred in litigating the

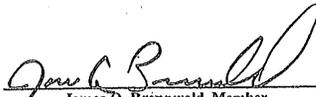
issue of whether the Respondent complied with the Order in Case No. S-CA-09-001 including the costs related to its preparation of the compliance petition, its preparation for and litigation of the compliance hearing, its preparation of the post-hearing brief, its preparation of the Motion for Sanctions, and its preparation of the Response to Respondent's Exceptions.

- e. Post at all places where notices to employees are ordinarily posted, copies of the notice attached hereto and marked "Addendum." Copies of this Notice shall be posted, after being duly signed by the Respondent, in conspicuous places for a period of 60 consecutive days. The Respondent shall take reasonable efforts to ensure that the notices are not altered, defaced or covered by other material.
- f. Notify the Board in writing, within 20 days from the date of this decision, of the steps that the Respondent has taken to comply herewith.

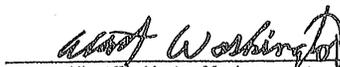
BY THE ILLINOIS LABOR RELATIONS BOARD, STATE PANEL


Jacaly J. Zimmerman, Chairman


Paul S. Besson, Member


James Q. Brennwald, Member


Michael G. Coti, Member


Albert Washington, Member

Decision made at the State Panel's public meeting in Chicago, Illinois, on January 10, 2012; written decision issued at Chicago, Illinois, January 27, 2012.

NOTICE TO EMPLOYEES

FROM THE ILLINOIS LABOR RELATIONS BOARD

The Illinois Labor Relations Board has found that the City of Markham has violated the Illinois Public Labor Relations Act and has ordered us to post this Notice. We hereby notify you that:

The Illinois Public Labor Relations Act gives you, as an employee, these rights:

To engage in self-organization.

To form, join, or help unions.

To bargain collectively through a representative of your own choosing.

To act together with other employees to bargain collectively or for other mutual aid or protection.

And, if you wish, not to do any of these things.

Accordingly, we assure you that:

WE WILL NOT fail to timely remit dues and fair share fees collected through payroll deduction to the Markham Professional Firefighters Association, IAFF Local 3290 as provided for in the collective bargaining agreement.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce our employees in the exercise of their rights under the Act.

WE WILL timely remit dues and fair share fees collected through payroll deduction to the Markham Professional Firefighters Association, IAFF Local 3209 as provided for in the collective bargaining agreement.

WE WILL pay interest on all dues which have been deducted since January 22, 2008, and have been remitted late.

WE WILL rescind the unilateral directive to remove the Union file cabinet from Station NO. 2 and permit the Markham Professional Firefighters Association, IAFF Local 3209 to return the Union file cabinet to that location.

This notice shall remain posted for 60 consecutive days at all places where notices to employees are regularly posted.

Date of Posting

City of Markham (Employer)

ILLINOIS LABOR RELATIONS BOARD

One Natural Resources Way, First Floor
Springfield, Illinois 62702
(217) 785-3155

160 North LaSalle Street, Suite S-400
Chicago, Illinois 60601-3103
(312) 793-6400

**THIS IS AN OFFICIAL GOVERNMENT NOTICE
AND MUST NOT BE DEFACED.**