STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Countiss Perkins, Charging Party and Chief Judge of the Circuit Court of Cook County (Cook County Juvenile Temporary Detention Center), Respondent	)	Case No. S-CA-09-225

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD STATE PANEL

On January 26, 2012, Administrative Law Judge (ALJ) Eileen L. Bell issued a Recommended Decision and Order (RDO) in the above-captioned case, recommending that the Illinois Labor Relations Board, State Panel (Board) dismiss a complaint filed on behalf of Countiss Perkins (Charging Party). The complaint alleged that the Chief Judge of the Circuit Court of Cook County violated Section 10(a)(1) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), as amended (Act),[1] by directing Charging Party's supervisors to deny her overtime opportunities because she had grieved prior denials of overtime. Charging Party filed timely exceptions to the RDO pursuant to Section 1200.135 of the Board's Rules, 80 Ill. Admin.

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[1] Section 10(a)(1) provides:

> It shall be an unfair labor practice for an employer or its agents:
>
> (1) to interfere with, restrain or coerce public employees in the exercise of the rights guaranteed in this Act or to dominate or interfere with the formation, existence or administration of any labor organization or contribute financial or other support to it; provided, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay[.]

Code Parts 1200 through 1240. Respondent filed a timely response. After reviewing the record, exceptions and response, we reverse the ALJ's RDO and remand for a hearing.

Charging Party works at the Cook County Juvenile Temporary Detention Center (JTDC) and the ALJ's recommendation to dismiss arises out of the unusual arrangements made for the management of that facility. Authority over the JTDC has, pursuant to state statute, been transferred from the County of Cook to Respondent, the Chief Judge of the Circuit Court of Cook County. Public Act 95-194 (eff. Jan. 1, 2008). However, before that transfer, the County of Cook had been named a defendant in federal class action litigation concerning alleged violations of detainees' civil rights at the JTDC. The parties to that litigation, including Respondent's predecessor in interest, the County of Cook, eventually agreed to the appointment of a Transitional Administrator (TA) to oversee the JTDC. An agreed order to that effect, appointing Earl Dunlap to the post, was entered by a federal District Court. As set out in the RDO, the agreed order and subsequent court orders specify that the TA is an agent of the court, provide him with the same immunity as the court, and supply him with broad powers to get the JTDC into compliance with constitutional standards, including the power to create, abolish or transfer positions, to hire, terminate, promote, transfer, and evaluate staff, and to negotiate new contracts. Jimmy Doe v. Cook Cnty., No. 99 C 3945 (N.D. Ill.), Agreed Order Appointing a Transitional Administrator (Aug. 14, 2007); id., Agreed Order (May 8, 2008); id., Order (May 28, 2009); id., Memorandum Opinion and Order (June 23, 2010).[2]

[2] The District Court's May 28, 2009 order suspended the laws of the State of Illinois as they pertain to enforcement of a collective bargaining agreement entered between the County of Cook and Teamsters Local 714 (now Local 700). Its June 23, 2010 Memorandum Opinion and Order, approving the TA's plan to force incumbent employees to re-qualify for employment, prompted the Teamsters to appeal to the U.S. Court of Appeals for the Seventh Circuit. Jimmy Doe v. Cook Cnty., No. 10-2746 (7th Cir.). Oral argument was held in that case on February 17, 2011, at which significant issues regarding the validity of the District Court's orders were raised (oral argument available on the court's website at http://www.ca7.uscourts.gov/fdocs/docs.fwx?caseno=10-2746&submit=showdkt&yr=10&num=2746),

The ALJ recommended dismissing the case on the basis that the Board lacked jurisdiction because the TA was neither a joint employer of Charging Party, nor an agent of Respondent, Chief Judge. She found the TA was not an agent of Respondent because the Chief Judge did not have the right or duty to supervise or control the TA, and, more significantly, because the District Court's Agreed Order gave the Chief Judge no right to terminate his relationship with the TA except by means of agreement with the other party to the federal class action and the approval of the District Court. In fact, the District Court orders provide that the TA is the District Court's agent, not the agent of the Chief Judge. The ALJ further found that the TA could not be a joint employer of the Charging Party because it could not meet the definition of a public employer set out in Section 3(o) of the Act.[3] Citing Am. Fed'n of State, Cnty. and Mun. Emps., Council 31 v. Ill. Labor Relations Bd., 216 Ill. 2d 569 (2005), and State of Ill., Dep't of Cent. Mgmt. Servs. (Dep't of Corr.), 4 PERI ¶ 2034 (IL SLRB 1988), ALJ Bell stated that "[n]either the Board nor the Illinois courts have found a joint employer relationship when the entity with ties to a named respondent was other than a public employer."

We find a different lesson in Am. Fed'n of State, Cnty. and Mun. Emps., Council 31 v. Ill. Labor Relations Bd., 216 Ill. 2d 569 (2005) (commonly referred to as "Wexford" after the

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and after which the Court of Appeals ordered the filing of supplemental briefs. However, to date no decision has been issued by the Court of Appeals, and the District Court continues to issue orders in the case, most recently on June 13, 2012, directing the County of Cook to make payment to the Office of the TA for maintenance of the JTDC. Jimmy Doe v. Cook Cnty., No. 99 C 3945 (N.D. Ill.), Order (June 13, 2012). Until such time as the Court of Appeals should rule otherwise, we assume the validity of the District Court's orders appointing the TA and pertaining to his duties and powers.

[3] Section 3(o) generally defines a public employer as follows:

> Except as otherwise in subsection (o-5), "public employer" or "employer" means the State of Illinois; any political subdivision of the State, unit of local government or school district; authorities including departments, divisions, bureaus, boards, commissions, or other agencies of the foregoing entities; and any person acting within the scope of his or her authority, express or implied, on behalf of those entities in dealing with its employees.

It contains many exceptions, but does not mention, specifically or by description, an entity like the TA.

private contractor at issue in the case, which provided health services at Illinois Department of Corrections facilities).[4] If the mere fact that the private contractor was not a public entity was enough to eliminate the potential for a joint employer relationship, the Illinois Supreme Court would never have engaged in its analysis and held that the Board must consider actual control over aspects of the employment relationship in place of mere theoretical control. The decision does not support a holding that the nature of the TA necessarily eliminates the existence of a joint employer situation, or that the existence of the TA entirely removes our authority and obligation to address an alleged unfair labor practice.

It seems likely that the Charging Party is a public employee within the meaning of Section 3(n) of the Act—the ALJ did not hold that the TA was the sole employer of Charging Party—and as such she should be entitled to redress for violations of the Act. And, though his role is likely limited, it seems Respondent, Chief Judge, has some role in the employment relationship—his predecessor in interest agreed to the creation and appointment of the TA in the first place. We understand the theoretical basis for arguing that the Chief Judge has no real control in the situation, but Wexford holds we must examine actual control. Consequently we find we must remand for a hearing to examine, as we would normally do in an alleged joint employer situation, the extent to which the various aspects of an employment relationship are controlled by the Respondent and by the TA. In any event, there is no need for application of the

[4] We find our decision in State of Ill., Dep't of Cent. Mgmt. Servs. (Dep't of Corr.), 4 PERI ¶ 2034 (IL SLRB 1988), of limited value given its position at an intermediary stage of a long and complicated procedural history. The Board decision cited by the ALJ was issued after a remand from the Illinois Appellate Court, Ill. Nurses Ass'n v. State Labor Relations Bd., 156 Ill. App. 3d 841 (1st Dist. 1987), which reversed the Board's first decision, State of Ill., Dep't of Cent. Mgmt. Servs. (Dep't of Corr.), Case No. S-CA-100, 1 PERI ¶ 2028 (IL SLRB 1985), and was itself reversed by a second decision issued by the Illinois Appellate Court, Ill. Nurses Ass'n v. Ill. State Labor Relations Bd., 196 Ill. App. 3d 576 (1st Dist.), leave to appeal den., 132 Ill. 2d 576, 581 (1990), although a third decision of the Illinois Appellate Court (following grant of certiorari and remand by the U.S. Supreme Court, Ill. State Labor Relations Bd. v. Ill. Nurses Assoc., 499 U.S. 944 (1991)) vacated the second Appellate Court decision, Ill. Nurses Assoc. v. Ill. State Labor Relations Bd., 244 Ill. App. 3d 1 (1st Dist. 1991), theoretically restoring the Board's holding.

concept of respondeat superior to find Respondent financially responsible for actions taken directly by a joint employer, Grchan v. Ill. State Labor Relations Bd., 315 Ill. App. 3d 459, 469-70 (3d Dist. 2000) (county liable for actions of sheriff), so contrary to the ALJ's assumption, absence of an agency relationship does not eliminate our responsibility to ascertain whether the Act has been violated and, if it had been violated, to determine the appropriate relief. For these reasons, we conclude that a hearing should be held to determine what transpired with respect to the Charging Party's allegations and to examine the actual employment practices at the JTDC and the control exercised by the TA and by the Chief Judge of the various aspects of the employment relationship.

We recognize that our authority to order the forms of relief we may ultimately deem warranted may be limited by the orders issued by the District Court, and that those orders may also impact our ability to call witnesses and fully examine the events and the employment relationship. We further recognize that the propriety of those orders is a matter currently under consideration by the Court of Appeals, and that its eventual ruling may have the additional benefit of illuminating the extent of our limitations. Consequently, although we remand for a hearing, we direct that the case be held in abeyance pending resolution of the appeal pending in the Court of Appeals, or an indication that the Court of Appeals will not resolve that matter.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

Jacalyn J. Zimmerman, Chairman

Paul S. Besson, Member

Michael G. Coli, Member

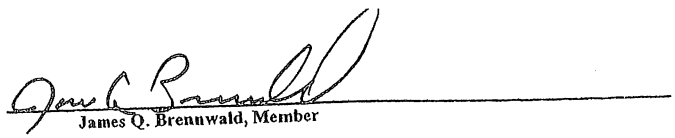
Albert Washington, Member

Member Brennwald, concurring in part and dissenting in part:

I fully agree with the decision to remand this matter for hearing, and dissent only to the extent that the majority has directed that the hearing be held in abeyance pending further determinations by the federal Court of Appeals regarding the extent of the TA's authority to set terms and conditions of employment at the JTDC. As I see it, the essential rationale for remanding this matter for hearing is that we should not be abdicating jurisdiction over a claimed unfair labor practice absent a clear showing that a charging party is not in fact a "public employee" entitled to the protections of the Act. As the majority recognizes, by focusing exclusively on the federal court orders pertaining to the TA's *de jure* authority over JTDC employees, the ALJ's recommended decision failed to consider the degree to which the Chief Judge retained actual, *de facto* control over the Charging Party's terms and conditions of employment, Am. Fed'n of State, Cnty. and Mun. Emps., Council 31 v. Ill. Labor Relations Bd., 216 Ill. 2d 569 (2005), and accordingly failed to account for the possibility – even the likelihood – that the Chief Judge remains at least a joint employer of the Charging Party, and that Charging Party therefore remains a "public employee" under the Act. If, after hearing, we conclude that Charging Party is indeed at least jointly employed by the Chief Judge, and that an unfair labor practice was committed, then Charging Party is entitled to the protections of the Act, and it is our obligation to address and remedy that unfair labor practice without unnecessary delay. See Policemen's Benevolent Labor Committee and City of Ottawa, 27 PERI ¶ 6, 2011 WL 2183755 at 5 (ILRB SP 2011) (citing the general "public policy favoring the expeditious resolution of labor disputes").

Given that the instant charge was filed on April 12, 2009, well over three years ago, and also given that, in my view, any intervening federal court orders regarding the TA's *de jure*

authority will likely have little impact on our analysis of the extent to which the Chief Judge retained *de facto* employer-like control over Charging Party's terms and conditions of employment, I see little to be gained by denying Charging Party the right to commence the hearing process without further delay if she so chooses. The reasons cited by the majority for holding the matter in abeyance – the federal court orders may affect our ability to direct a remedy with respect to the TA, or the parties' ability to call witnesses – are both, at this stage, theoretical concerns that I see as tertiary to the essential questions of whether the Chief Judge is at least a joint employer, and whether an unfair labor practice was committed, and concerns that Charging Party should be given the opportunity to weigh for herself in determining how to proceed with hearing on her charge.



James Q. Brennwald, Member

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

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Countiss Perkins,	)	
	)	
Charging Party	)	
	)	
and	)	**Case No. S-CA-09-225**
	)	
Chief Judge of the Circuit Court of Cook County (Cook County Juvenile Temporary Detention Center),	)	
	)	
Respondent	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On April 7, 2009, Countiss Perkins (Charging Party) filed an unfair labor practice charge in the above-captioned case with the State Panel of the Illinois Labor Relations Board (Board) pursuant to Section 11 of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010) as amended (Act), and the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code, Parts 1200 through 1240 (Rules) alleging that the Chief Judge of the Circuit Court of Cook County (Cook County Juvenile Temporary Detention Center) (Respondent) had violated Section 10(a)(1) of the Act. The charges were investigated in accordance with Section 11 of the Act and on July 29, 2009 the Executive Director of the Illinois Labor Relations Board issued a Complaint for Hearing.

The Complaint alleged a violation of the Act based on the actions of the Temporary Administrator (TA) of the Cook County Juvenile Temporary Detention Center (JTDC). According to the Complaint, the TA is the Respondent's "agent authorized to act on its behalf." The Respondent denied this allegation of the Complaint. On May 24, 2011, the Administrative Law Judge (ALJ) issued an Interim Order Granting in Part and Denying in Part Charging Party's

Motion to Amend the Complaint. On September 8, 2011, the ALJ issued an Order Bifurcating the Hearing so that the jurisdictional issue set forth below could be resolved before conducting a hearing on the alleged violation of the Act:

> whether, at all times material, Earl Dunlop, the Transitional Administrator, has been an agent of Respondent and/or joint employer with Respondent.

The parties stipulated to the authenticity of the nine documents in the record. They fully briefed the issue regarding the TA's status as an agent of Respondent and/or a joint employer with Respondent. After full consideration of the parties' stipulations, evidence, and arguments, and upon the entire record of the case, I recommend the following:

I. BACKGROUND

Named juveniles detained at the JTDC filed a lawsuit in the Federal District Court for Northern Illinois on June 15, 1999 seeking declaratory and injunctive relief under 42 U.S.C. § 1983 to redress violations of the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution. The named plaintiffs and the class they represent sought relief for alleged violations of their rights due to practices and living conditions at the JTDC. The named plaintiffs filed their complaint in federal district court on behalf of themselves and all persons who have been, are, or will be confined at the JTDC. The defendants in the federal lawsuit were Cook County and the superintendent of the JTDC at the time the lawsuit was filed.

In December 2002, the parties entered into a Memorandum of Agreement (MOA) to resolve the lawsuit without an admission of guilt. The MOA stated that its purpose was "to assure that defendants house residents [at the JTDC] in an environment that, at a minimum, is safe and clean, is free from excessive and unfair discipline, and provides adequate care and services, including adequate food, shelter, medical services, mental health care, and provides an adequate environment for educational services."

In furtherance of the MOA, the defendants were made responsible for the creation and implementation of a plan to "describe appropriate hiring standards and procedures as well as a plan for staff training." The MOA also directed the defendants to "maintain an adequate system of staff oversight and discipline which reasonably assures that the alleged incidents of abuse, neglect, and other staff misconduct are promptly investigated and appropriate action is taken where warranted." A paragraph of the MOA created independent and impartial monitor(s) to evaluate and report to the parties on implementation and compliance with the MOA.

On August 14, 2007, Judge John A. Nordberg of the Federal District Court for the Northern District of Illinois signed an Agreed Order Appointing a Transitional Administrator in the JTDC. That Agreed Order provided as follows:

Introduction

1. The purpose of this Order is to appoint a Transitional Administrator (TA) with the authority and responsibility to bring the Cook County Juvenile Temporary Detention Center (JTDC) into substantial compliance with the Memorandum of Agreement (MOA), the Agreed Supplemental Order (ASO), and the Modified Implementation Plan (MIP) and, if consistent with Illinois law, to prepare the JTDC for the transition of administrative authority over its operations to the Office of the Chief Judge of the Circuit Court of Cook County.
2. ***The TA shall be an agent of this Court*** and is specifically appointed with the authority and responsibility to put in place at the JTDC qualified management to implement the requirements of the MOA, the ASO, and the MIP. (Emphasis added).

* * *

4. The Court appoints Mr. Earl L. Dunlop as the TA.

Responsibilities of the TA

5. The TA shall have the following responsibilities.
   a. To develop and implement systems at the JTDC to achieve substantial compliance with the MOA, the ASO, and the MIP.
   b. To oversee, supervise, and direct all . . . functions relating to the operation of the JTDC consistent with the authority vested in the position of Superintendent of the JTDC and to restructure the JTDC into an institution that substantially complies with the MOA, the ASO, and the MIP.

* * *

f. To exercise his authority as TA in a manner consistent with the laws, policies and regulations of Cook County and the law of the State of Illinois. ***However, where those laws interfere with the TA's responsibilities set out in this Order, the TA, or either party, may petition the Court to waive any requirements imposed thereby. Should the TA determine that it is necessary for him to bypass any policy or regulation of Cook County, he shall inform the parties who may petition this Court for the appropriate relief. If the parties elect not to petition this Court, the TA shall utilize his discretion to bypass a policy or regulation of Cook County where he believes it is necessary under the circumstances***. (Emphasis added).

Authority Granted to the TA

6. The TA shall have all reasonable powers necessary to bring the JTDC into substantial compliance with the MOA, the ASO, and the MIP, including:

a. All powers relating to the operation of the JTDC, which in usual circumstances, are exercised by the Superintendent of the JTDC.

* * *

b. The power to establish the budget for all functions relating to the operation of the JTDC (JTDC budget) which shall be presented to the Board of Commissioners as part of the annual appropriation process.

* * *

c. The power to establish personnel policies; to create, abolish, or transfer positions; and to hire, terminate, promote, transfer, and evaluate management and staff of the JTDC.

d. The power to negotiate new contracts and to renegotiate existing contracts, relating to the operation of the JTDC consistent with the provisions of paragraph 5(f).

e. The power to retain consultants to assist with bringing the JTDC into substantial compliance with the MOA, the ASO, and the MIP

f. The power to restructure and reorganize any management and administrative structures of the JTDC.

* * *

i. The power to petition the Court for any additional powers necessary to bring the JTDC into substantial compliance with this Order, the MOA, the ASO, and the MIP.

* * *

7. Office of the Transitional Administrator

a. Upon appointment, the TA shall promptly establish an Office of the Transitional Administrator (OTA). The OTA shall include reasonable staff to effectuate this Order.

b. Cook County shall be responsible for the reasonable expenses incurred in operating the OTA.

* * *

h. ***As this Court's representative, appointed to bring the JTDC into substantial compliance with this Order, the MOA, the ASO, and the MIP, the TA shall have absolute immunity from liability.***

* * *

12. The Court retains jurisdiction of this matter for all purposes, including the entry of any additional orders necessary to enforce this Order, the MOA, the ASO, or the MIP.

* * *

15. If, for any reason, the TA, referred to in paragraph 4 above, resigns or becomes unavailable to continue, or the parties agree or the Court determines that he should be replaced, the parties will attempt to agree on the identity of a successor TA. If the parties are unable to agree on a successor TA after twenty-one (21) days, each party shall submit to the Court its nomination of one person to assume the appointment of the TA, together with a statement of the reasons that person is qualified to be appointed the TA. The Court will select one of the party's nominees as the TA or, at its discretion, may solicit additional nominees from the parties.

* * *

On May 8, 2008 Judge Nordberg signed an Order which addressed an emergency motion made by the TA. That emergency motion requested to retain a private company to provide temporary security staffing and sought other relief. The Teamsters, Local No. 714, filed objections to that motion. In relevant part, the Order of that date reads as follows:

3. [T]he Court finds that the JTDC is dangerously understaffed and that, as a result of this understaffing, the health and safety of the residents is at risk. This situation constitutes an emergency. The Court also finds that Mr. Dunlop's [the TA] proposed plan to hire temporary security staff and to shift the assignments of some permanent staff to use them more effectively is a reasonable and narrowly-tailored response to the crisis at the JTDC and that it is necessary to bring about compliance with (i) this Court's order of December 2002, approving the Memorandum of Agreement negotiated by the parties; (ii) the Agreed Supplemental Order entered in May 2006; and (iii) the Agreed Order Appointing a Transitional Administrator entered in August 2007. This Court finds that the Union's proposed alternative of putting temporary staff workers into existing vacancies on the day shifts would necessarily increase the danger to both residents and staff because the new workers have not worked at this facility and do not have personal relationships with the residents.

* * *

5. The Court, with the agreement of the TA and the plaintiffs, and without objection from the defendants, therefore grants the TA's Emergency Motion, overrules [Teamsters Local No. 714's] objections, and awards the following relief:

* * *

> a. Pursuant to Paragraph 5(f) of this Court's August 14, 2007, Agreed Order Appointing a Transitional Administrator, the Court orders that any and all laws of the State of Illinois and Cook County Ordinances that may in any manner, restrain hinder or prevent the Transitional Administrator from contracting for the temporary services of a private security firm, including Ordinances . . ., are hereby suspended in order to carry out the relief sought in the Emergency Motion.
>
> * * *
>
> c. ***The court hereby suspends any and all laws of the State of Illinois and ordinances of the County of Cook that require compliance with any provision of the current Collective Bargaining Agreement ("CBA") between Cook County and [Teamsters Local No. 714], as well as said provisions of the CBA itself, including Section 4.11 [entitled Job Posting and Bidding] of the CBA, to the extent necessary and appropriate in the TA's judgment to provide adequate security and safe conditions in the JTDC.*** (Emphasis added).

* * *

On June 22, 2010, Judge James F. Holderman granted the TA's Motion to Modify the federal court's August 14, 2007 Order. That modification provided as follows:

> Paragraph 7(h) of the Court's August 14, 2007 Order . . . is hereby deleted and replaced with the following language: "Effective August 14, 2007, the TA and his staff shall have the status of officers and agents of this Court and as such shall be vested with the same immunities as vested with this Court. Also effective August 14, 2007, the County shall indemnify the TA and members of his staff to the same extent that Cook County and/or the Office of the Chief Judge of the Circuit Court of Cook County is obligated to indemnify the Superintendent of the JTDC."

II. DISCUSSION AND ANALYSIS

The Charging Party maintains that the Board has jurisdiction to hear this matter because the TA is an agent of the Respondent and/or the TA and Respondent are joint employers. According to the Charging Party, the TA's designation as an agent of the federal court does not preclude him from also being Respondent's agent in the instant matter before the Board. In addition, the Charging Party contends that both the TA and the Respondent exercise the requisite control over the Charging Party's terms and conditions of employment to be deemed joint

employers. However, a thorough examination of the record demonstrates that the TA is neither Respondent's agent nor its joint employer.

In its decision in Illinois Nurses Association and State of Illinois, Department of Central Management Services (Dep't of Corrections), 4 PERI ¶2034((IL SLRB 1988), the Board recognized that under Illinois law the primary consideration in determining whether an entity is acting as an agent is the nature and degree of control exercised over the work being performed. See Dumas v. Lloyd, 6 Ill. App. 3d 1026, 1029, 286 N.E. 2d 566 (1st Dist. 1972). In particular, the relationship of principal and agent exists if the principal has the right or the duty to supervise and control, and also has the right to terminate the relationship at any time. Hulke v. International Manufacturing, 14 Ill. App. 2d 5, 33, 142 N.E. 2d 717 (2d Dist. 1957).

Applying this case law to the facts herein, the TA is not an agent of the Respondent since Respondent cannot unilaterally terminate its relationship with the TA. The record shows that the TA was created in August 2007 as an agent of the federal district court. Paragraph 15 of the Agreed Order of August 14, 2007, specifically provides that the defendants in the federal case—Cook County and the Superintendent of the JTDC—must obtain the agreement of the plaintiffs in the federal lawsuit if they want to replace him. As the Charging Party acknowledged in its brief, there is no meaningful distinction between the named defendants in the federal lawsuit and the Respondent in the instant case before the Board. Accordingly, based on the August 2007 Agreed Order, the Respondent lacks the authority to terminate its relationship with the TA. I thus conclude that the TA is not an agent of the Respondent under Illinois law.

Even if the TA were considered an agent of the Respondent pursuant to general agency law in the state, it cannot meet the more demanding agency language in Section 3(o) of the Act. See INA and State of Illinois, Dep't of Central Management Services, (Dep't of Corrections), 4

PERI ¶2034 (IL SLRB 1988). In relevant part, Section 3(o) of the Act defines a public employer as follows:

> "public employer" or "employer" means the State of Illinois; any political subdivision of the State, unit of local government or school district; authorities including departments, divisions, bureaus, boards, commissions, or other agencies of the foregoing entities; ***and any person acting within the scope of his or her authority, express or implied, on behalf of those entities in dealing with its employees.*** (Emphasis added).

The language in bold of this cited excerpt limits coverage of the Act to only those situations where the "agent" acts "on behalf of" the public entity. However, the August 14, 2007 Agreed Order of the federal court plainly states that the TA is the Court's representative, appointed with the purpose of bringing the JTDC into substantial compliance with the MOA, the ASO, and the MIP. As such, the TA is not "acting on behalf of" the Respondent but rather the federal court which empowered him. Consequently, the TA is not an agent of Respondent within the meaning of Section 3(o) of the Act.

The Charging Party's argument that the TA is a joint employer with the Respondent is also without merit. Because the TA fails to satisfy the Act's definition of a "public employer," it cannot be a joint employer with Respondent. Neither the Board nor the Illinois courts have found a joint employer relationship when the entity with ties to a named respondent was other than a public employer. See American Federation of State, County, and Municipal Employees, Council 31 v. Illinois Labor Relations Board. 216 Ill. 2d 569, 21 PERI ¶171 (2005); INA and State of Illinois, Dep't of Central Management Services, (Dep't of Corrections), 4 PERI ¶2034 (IL SLRB 1988).[1]

[1] In 1991, the Illinois Appellate Court for the First District vacated its own 1990 decision regarding this Board dismissal, and dismissed the appeal of the Board's decision for want of jurisdiction. INA v. ISLRB, 244 Ill. App. 3d 1, 9 PERI ¶4013 (1st Dist. 1991).

A brief review of the Act's Section 3(o) definition of public employer confirms that the TA does not meet its requirements. First, the TA is not a subdivision of the State, a unit of local government, or an authority of such an entity. In addition, the TA is not "acting on behalf of" those entities. Instead, the TA was created by a federal district court as its representative and agent to secure substantial compliance with the terms of a settlement in a lawsuit.

The Charging Party's reference to a passage from the Illinois Supreme Court's decision in AFSCME, Council 31 v. ILRB, 216 Ill. 2d 569 (2005), does not support its position that the TA is a joint employer with Respondent. In that case, the Court held that the private entity—thus a non-public employer—and the respondent were not joint employers, and confirmed the Board's decision that it had no jurisdiction to hear the case.

Moreover, the analysis by the state's highest court is inapposite because the facts presented before the Illinois Supreme Court were not similar to those of the instant case. In particular, the employees who were allegedly subject to a joint employer relationship in that case were the *employees of the private entity* with which the respondent, a public employer, was supposedly a joint employer. However, in the case at bar, the employees allegedly subject to a joint employer relationship are *the JTDC employees employed by the Respondent, a public employer,* with whom the TA is supposedly a joint employer.

The determination that the TA is neither an agent of Respondent nor joint employer leads to the inevitable conclusion that the Board is without jurisdiction over the TA or any action of the TA. This conclusion is consistent with the Executive Director's order of April 2009 in Case No. S-CA-09-087 dismissing an unfair labor practice charge for lack of jurisdiction over the TA.

III. CONCLUSIONS OF LAW

The Transitional Administrator is not Respondent's agent, nor a joint employer with the Respondent. Therefore, the Board lacks jurisdiction to hear this case.

IV. RECOMMENDED ORDER

This case is dismissed.

V. 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 Board's General Counsel at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103 and served on all other parties. Exceptions, responses, cross-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 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 26th day of January 2012.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD

Eileen L. Bell
Administrative Law Judge