

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

Ann Moehring,)	
)	
Charging Party)	
)	
and)	Case No. S-CA-10-241
)	
Chief Judge of the 16th Judicial Circuit,)	
)	
Respondent)	

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

On August 31, 2011, Administrative Law Judge (ALJ) Sharon B. Wells issued a Recommended Decision and Order (RDO) in the above-captioned case, dismissing a complaint in which Ann Moehring (Charging Party) alleged the Chief Judge of the 16th Judicial Circuit (Respondent) had violated Section 10(a)(2) and (1) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010) as amended (Act), by terminating her because she had engaged in union and/or protected concerted activity. The ALJ found that the Illinois Labor Relations Board, State Panel, should defer to an arbitration award issued by Arbitrator Steven Bierig on June 13, 2011, that found Charging Party had been terminated for just cause and not because she had engaged in union activity. The ALJ found to be present all four elements for post-arbitration deferral required under Spielberg Mfg. Co., 112 NLRB 1080 (1955), and adopted by the Illinois Labor Relations Board, Alton Firefighters Ass'n, IAFF Local 1255 and City of Alton, 22 PERI ¶102 at 2 (IL LRB-SP 2006): 1) the issues presented in the unfair labor practice complaint had been presented to, and considered by, the arbitrator; 2) the arbitration proceedings appeared fair and regular; 3) all parties to the arbitration agreed to be bound by the award; and 4) the arbitration award was not clearly repugnant to the purposes of the Act.

Charging Party filed timely exceptions to the RDO pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200 through 1240, and Respondent filed a timely response. After reviewing the record, briefs, exceptions, and response, we adopt the ALJ's findings of fact and recommended decision, defer to the arbitration award, and dismiss the complaint. We briefly address the arguments presented in Charging Party's exceptions.

Charging Party first argues the arbitration proceedings did not support the arbitrator's framing of the issues, findings and decision, and cites Chicago Transit Authority, 16 PERI ¶3010 (IL LLRB 1999), in support of her position that we should not defer under such circumstances. To the extent this argument encourages us to add to the Spielberg elements, we decline. In determining whether Spielberg deferral is appropriate, we do not examine the arbitration record to determine if it supports the arbitrator's findings. In Chicago Transit Authority we refused to defer because there had been no dispute that the arbitration award had *not* directly addressed the unfair labor practice issue, one of the Spielberg elements. We also noted we could not determine if the issue had even been presented to the arbitrator because the transcript of the arbitration award had not been presented for our review. Charging Party here has submitted to us the transcript of the arbitration hearing held before Arbitrator Bierig, but that fact does not compel us to reject deferral. Rather, Arbitrator Bierig clearly did address the unfair labor practice issue, and the transcript reveals that Charging Party's representative had indeed raised the issue before the arbitrator in its opening argument. Whether Charging Party had at the arbitration hearing presented all the evidence it could muster in support of its argument is of no moment. Cf. Spielberg Mfg. Co., 112 NLRB at 1082 (NLRB does not consider whether it would have ruled the same way as the arbitrator). That the issue was raised and addressed in a fair, regular, and binding arbitration proceeding under which the parties could have fully evidenced the issue is all

that matters. Id.

Charging Party also notes that it was her collective bargaining representative that was the party before the arbitrator, whereas the unfair labor practice charge was filed directly under her name, and consequently argues there is an issue as to whether she had agreed to be bound by the arbitration award. Charging Party does not actually deny that she had agreed to be bound by the arbitration award, merely that the difference in parties raises an issue on that point. In failing to actually assert that the ALJ erred, Charging Party fails to present us with a sound basis for rejecting the ALJ's recommendation. Even if she had been willing to commit to the issue she raises, we would reject it. We note that in Hershey Chocolate Corp., 129 NLRB 1052 (1960), enforcement denied, 297 F.2d 286 (3d Cir. 1961), the NLRB refused to defer and hold individual parties bound by an arbitration award to which their representative had agreed to be bound where the interests of the individual parties were adverse to those of their union. Here, in contrast, Charging Party's union had arbitrated the grievance solely on her behalf—she had been the only employee dismissed—and we find their interests to be identical. Charging Party was undoubtedly aware that the union was representing her interests in arbitration, and its agreement to be bound effectively bound the Charging Party. We find this element for Spielberg deferral has been met under these circumstances.

We defer to Arbitrator Bierig's award, and dismiss the complaint.

BY THE ILLINOIS LABOR RELATIONS BOARD, STATE PANEL


Jacaly C. Zimmerman, Chairman


Paul S. Besson, Member


James Q. Brennwald, Member


Michael G. Coli, Member


Albert Washington, Member

Decision made at the State Panel's public meeting in Chicago, Illinois, on February 7, 2012;
written decision issued at Chicago, Illinois, February 22, 2012.