

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

Service Employees International Union,)	
Local 73,)	
)	
Charging Party)	
)	
and)	Case No. S-CA-10-283
)	
City of Waukegan,)	
)	
Respondent)	

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

On September 13, 2010, Executive Director, John F. Brosnan, issued a partial dismissal of certain aspects of the unfair labor practice charge filed by the Service Employees International Union, Local 73 (Charging Party) in the above-captioned case. The Charging Party alleged that the City of Waukegan (Respondent) engaged in unfair labor practices within the meaning of Section 10(a) of the Illinois Public Labor Relations Act, 5 ILCS 315/10(a) (2010). The Charging Party filed a timely appeal of the Executive Director's Partial Dismissal pursuant to Section 1200.135(a) of the Board's Rules and Regulations, 80 Ill. Admin. Code §1200.135(a). The Respondent filed no response. After reviewing the record and appeal, we reverse the Executive Director's Partial Dismissal.

The Executive Director issued a complaint for hearing on that part of the charge that alleged the Respondent violated the Act by threatening to lay off, and then laying off, employees represented by Charging Party. He dismissed that part of the charge that alleged implementation of the layoff violated the collective bargaining agreement, because he interpreted the provision in the agreement that reserved to the Employer the right to determine

the size of the workforce as a right to lay off employees. The Executive Director determined that Charging Party waived its right to pursue its claim that the Respondent failed and refused to bargain the effects of the layoff by Charging Party's declining to negotiate effects issues after the Respondent offered to do so three weeks prior to the effective date of the layoff. The Executive Director also dismissed that part of the charge alleging that the Respondent made unilateral changes to employee health insurance, determining the Charging Party merely alleged a breach of contract rather than an unfair labor practice on that point.

The Charging Party appeals the Partial Dismissal, arguing that the Respondent violated the Act by failing to bargain over the layoff procedure and failing to bargain the effects of that decision after the Respondent gave official notice of the layoff on May 6, 2010. With respect to the employees' health insurance program, the Charging Party contends that the City made unilateral changes without notice and bargaining and refused to bargain in violation of Section 10(a)(4) of the Act.

With regard to the layoff issue, the Respondent contends that the Charging Party refused to bargain over the impact and effects of the lay offs proposed by the Respondent and that, under Section 7.6 of the Agreement, it had discretion to determine whether lay offs were necessary. The Respondent also contends that the changes it made to health insurance coverage were permissible under the Cost Containment provision of the Agreement and in accordance with the Health Plan pursuant to Sections 17.1 and 17.5 of the Agreement.

The Layoff Issue

We agree with the Executive Director that the Charging Party waived the right to bargain over the layoff decision. In Illinois Department of Central Management Services (Department of Public Aid), 10 PERI ¶2006 (IL SLRB 1993), the Board held that the union waived the right to

bargain layoffs where the management rights clause provided that management had a right to relieve employees from duty because of lack of work or other legitimate reasons and to determine the size and composition of the work force. In this case, the Respondent has the right under Section 7.6 of the Agreement in its discretion to determine whether lay offs are necessary. Thus, we conclude that the Respondent was not obliged to negotiate its decision to layoff employees.

However, that determination does not end the discussion. The Charging Party contends that it had the right to negotiate the effects of the layoff, while the Respondent argues, and the Executive Director found, that Charging Party had waived that right. To successfully assert a defense of waiver by inaction, an employer must demonstrate that the union had clear notice of the employer's intent to institute a change, that the notice was sufficiently in advance of the actual implementation so as to allow a reasonable opportunity to bargain about the change and that the union failed to make a timely request to bargain before the change was implemented. County of Cook, Forest Preserve District of Cook County, 4 PERI ¶3013 (IL LLRB 1988) NLRB v. Crystal Springs Shirt Corp., 637 F.2d 399 (5th Cir. 1981). In our opinion, the Charging Party has raised an issue as to whether it was required to demand bargaining before the Respondent provided it with official notice of the layoff on May 6, 2010. For this reason, we reject the Executive Director's determination and decide this issue must be included in the complaint.

Employees' Health Insurance

The Executive Director also dismissed that part of the charge that alleged the Respondent violated the Act by making unilateral changes to employees' health insurance. According to the Executive Director, the issues raise by the Charging Party were contractual, that is, the issue is

whether the Respondent complied with the agreement in making changes to health insurance and whether the Charging Party had to agree to changes in coverage prior to implementation.

The Charging Party argues that the Respondent made unilateral changes in the agreement's provisions regarding health insurance in violation of Section 10(a)(4) of the Act without securing the Charging Party's agreement to those changes. Those changes included changes in life and dental insurance carriers, increases in certain benefits, the introduction of copayments and two tiers of coverage.

The Employer's response was that under Article 17, Insurance, Section 17.5, Cost Containment, it has a right to

institute cost containment measures relative to insurance coverage. Such changes may include, but are not limited to, mandatory second opinions for elective surgery, pre-admission and continued admission review, prohibition on weekend admissions except in emergency situations, and mandatory outpatient elective surgery for certain designated surgical procedures. If a second opinion is required and received the employee shall have the choice as to which opinion to follow.

The Respondent further contends that the health insurance coverage provided to employees shall be in accordance with the City's Health Plan. Section 17.1 of the Agreement provides that health insurance coverage shall be administered in accordance with the City's Health Plan mutually agreed to by the parties, and shall include both a city major medical indemnity plan with a PPO and an HMO option. The Respondent further contends that the parties had already negotiated a process for changing the insurance for the bargaining unit and that it was not obliged to bargain what it had already bargained in the past.

We find the Charging Party's allegation that the changes in health insurance coverage constituted a unilateral change in violation of the Act should be included in the complaint. In our opinion, the Charging Party should be allowed the opportunity to establish that the health care changes were no mere breach of contract. See City of Kankakee (Kankakee Metropolitan

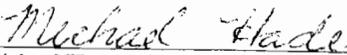
Wastewater Utility), 9 PERI ¶2034 (IL SLRB 1993); (employer made significant and material changes in level of insurance benefits to employees and its failure to bargain changes violated the Act); County of Jefferson, 10 PERI 2035 (IL SLRB ALJ 1994) (employer had duty to bargain significant changes in health insurance coverage).

For these reasons, we reverse the Executive Director's determination that the failure to bargain the effects of the layoff and the changes in health coverage did not raise an issue of law and/or fact for hearing and direct that those allegations be included in the complaint. We affirm remaining portions of his dismissal.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD



Michael Coli, Member



Michael Hade, Member



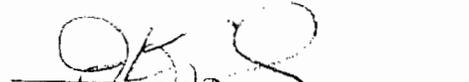
Albert Washington, Member

Chairman Zimmerman and Member Kimbrough, concurring:

We concur with the majority's partial reversal of the Executive Director's Partial Dismissal. However, we find that the issues raised in the charge are better suited for resolution through the grievance and arbitration procedure provided for in the parties' agreement because they inevitably invoke application of the contract. Accordingly, we would

have instead deferred those issues to arbitration. See Collyer Insulated Wire, 192 NLRB 837 (1971).


Jacalyn J. Zimmerman, Chairman


Jessica Kimbrough, Member

Decision made at the State Panel's public meeting in Chicago, Illinois on June 7, 2011; written decision issued in Chicago, Illinois on August 5, 2011.