

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

International Union of Operating Engineers,)	
Local No. 150,)	
)	
Charging Party)	
)	
and)	Case No. S-CA-11-227
)	
Village of Frankfurt,)	
)	
Respondent)	

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

On October 24, 2011, Executive Director John F. Brosnan dismissed the unfair labor practice charge filed by the International Union of Operating Engineers, Local No. 150 (Charging Party) in the above-captioned case. The Charging Party alleged that the Village of Frankfurt (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 execute a side letter to a collective bargaining agreement to which the parties had agreed.¹ The Executive Director reformed the allegations to reflect a charged violation of Section 10(a)(7) rather than 10(a)(4). He then

¹ Relevant portions of Sections 10(a) provide:

(a) 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;

* * *

(4) to refuse to bargain collectively in good faith with a labor organization which is the exclusive representative of public employees in an appropriate unit, including, but not limited to, the discussing of grievances with the exclusive representative;

* * *

(7) to refuse to reduce a collective bargaining agreement to writing or to refuse to sign such agreement.

dismissed the charge in its entirety because a party can violate Section 10(a)(7) only if it refuses to sign an agreement after there has been a meeting of the minds on all terms, and he found no evidence the parties had reached a meeting of the minds.

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, Parts 1200 through 1240, and Respondent filed a timely response. After reviewing the record, appeal and response, we reverse the Executive Director's dismissal and issue a complaint for hearing for the following reasons.

Issues, background and party positions

Issues presented include whether the Executive Director erred in reformulating the charges as asserting a Section 10(a)(7) violation and not a Section 10(a)(4) violation, whether the Executive Director made erroneous factual findings, and whether he erred in dismissing the charge.

The context of the issues and the parties' positions on the issues are these. The subject of the contemplated side letter concerned overtime callback procedures. That subject was relevant not only with respect to the members of the bargaining unit represented by Charging Party, consisting of police sergeants, but also with respect to members of a bargaining unit represented by the International Brotherhood of Teamsters, Local 700, consisting of police patrol officers. According to the Charging Party, Respondent had indicated that it would agree to whatever procedure the two unions could agree, but Respondent later refused to execute a side letter already signed by both unions.

The Executive Director's dismissal indicates the understanding between Charging Party and Respondent contemplated that the overtime callback procedures would be consistent with

existing procedures for the patrol officers, but Charging Party claims in its appeal that this assertion of fact is incorrect. The dismissal also indicates that when Respondent refused to sign the side letter, it explained that the costs associated with it were excessive, but Charging Party claims this, too, is incorrect and that Respondent never provided a reason for its refusal to execute the side letter.

Respondent argues the Executive Director correctly found there had been no meeting of the minds between Respondent and Charging Party concerning the side letter, and consequently there could be no Section 10(a)(7) issue. It also argues the Executive Director was correct to reformulate the charge as a Section 10(a)(7) violation because Charging Party had not really alleged a failure to bargain in good faith, but rather a failure to reduce an agreement to writing.

Analysis

We find the Executive Director's reformulation of the charge to be in error to the extent he ignored the allegations of a Section 10(a)(4) violation. We have previously held "the duty to bargain in good faith [under Section 10(a)(4)] encompasses an obligation to reduce to writing and to execute agreements reached through the collective bargaining process." City of Harvey, 18 PERI ¶2032 (IL LRB-SP 2002) (Respondent's failure to sign a collective bargaining agreement analyzed under 10(a)(4) where Respondent made no outright refusal to sign the agreement, where refusal was instead inferred from the Respondent's extreme delay in signing, and where Respondent gave no explanation for its delay); Chicago Transit Auth., 16 PERI ¶3021 (IL LRB-LP 2000) (respondent's failure to sign a last chance agreement and reduce it to writing constituted not only a violation of Section 10(a)(4) and (1) but also of 10(a)(7)); Cnty. of Cook (Cermak Health Servs.), 10 PERI ¶3009 (IL LLRB 1994) (lengthy delay in refusing to sign CBA absent express refusal to sign violated 10(a)(4) and (1) but not 10(a)(7) where no refusal was

inferred from respondent's conduct); State of Ill., Dep't of Cent. Mgmt. Serv. (Dep't of Corrections), 6 PERI ¶2038 (IL SLRB 1990) (respondent violated 10(a)(4) and (1) when it agreed to all terms of a grievance settlement yet failed to execute and implement it); Ill. Dep'ts of Corrections and Cent. Mgmt. Serv., 4 PERI ¶2043 (IL SLRB 1988) (respondent's refusal to honor a signed settlement agreement violated 10(a)(4)); City of Burbank, 4 PERI ¶2048 (IL SLRB 1988)(refusal to ratify tentative agreements on non-economic issues violated 10(a)(4)). Here, Charging Party adequately pleaded a Section 10(a)(4) violation because its charge stated that Respondent violated the Act when it failed to execute the side-letter. However, while we find the Executive Director should have analyzed the charges in the context of Section 10(a)(4), we find he did not err in analyzing them under Section 10(a)(7). Some conduct constitutes violations of both sections, see, e.g., Chicago Transit Auth., 16 PERI ¶3021, and we find analysis under both sections is appropriate here.

We further find that the Executive Director erred in asserting as fact that the contemplated callback procedures would be consistent with existing practices for the patrol officers and that Respondent had provided a reason for its refusal to execute the side letter. These are factual assertions made by the Respondent that are disputed by the Charging Party.

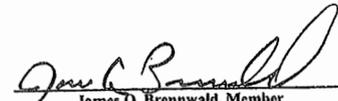
More fundamentally, we disagree with the Executive Director's determination that Charging Party failed to present sufficient evidence to raise an issue concerning whether the parties had reached a meeting of the minds such as to create an obligation to subsequently execute a written agreement. The parties' state of mind when entering into the alleged agreement is a material issue of fact, and the evidence submitted by the parties during the investigation does not sufficiently demonstrate absence of mutual assent. Because we find issues of material fact have been raised, a complaint for hearing is appropriate.

For these reasons, we reverse the dismissal of the charges and direct that a complaint for hearing issue alleging violations of Sections 10(a) (4), (7), and (1) of the Act.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD²


Jacalyn J. Zimmerman, Chairman


Paul S. Besson, Member


James Q. Brennwald, Member


Albert Washington, Member

Decision made at the State Panel's public meeting in Chicago, Illinois, on March 13, 2012; written decision issued at Chicago, Illinois, March 26, 2012.

² Because the date of the Board's March meeting was rescheduled, Board Member Coli was unable to participate in consideration of this case.

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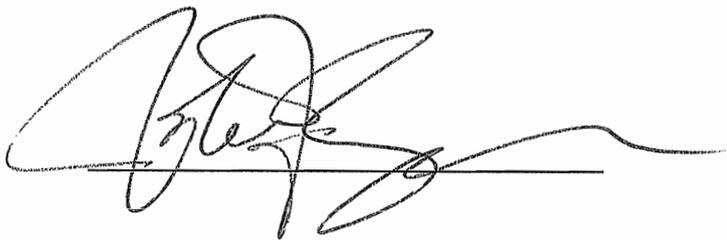
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AFFIDAVIT OF SERVICE

I, John F. Brosnan, on oath state that I have this 23rd day of March, 2012 served the attached **DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD STATE PANEL** issued in the above-captioned case on each of the parties listed herein below by depositing, before 5:00 p.m., copies thereof in the United States mail at 100 W Randolph Street, Chicago, Illinois, addressed as indicated and with postage prepaid for first class mail.

Ken Edwards
IUOE Local 150
6200 Joliet Road
Countryside, Illinois 60525

Amy Moor Graylord
Franczek Radelet
300 S. Wacker Drive, Suite 3400
Chicago, Illinois 60606



SUBSCRIBED and SWORN to
before me this 23rd day
of March 2012.



NOTARY PUBLIC

