

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

International Brotherhood of Teamsters,	)	
Local 705,	)	
	)	
Charging Party	)	
	)	
and	)	Case No S-CA-11-235
	)	
Thorn Creek Basin Sanitary District,	)	
	)	
Respondent	)	

**ORDER**

On January 18, 2013 Administrative Law Judge Elaine L. Tarver, on behalf of the Illinois Labor Relations Board, issued a Recommended Decision and Order in the above-captioned matter. No party filed exceptions to the Administrative Law Judge's Recommendation during the time allotted, and at its April 16, 2013 public meeting, the Board, having reviewed the matter, declined to take it up on its own motion.

**THEREFORE**, pursuant to Section 1200.135(b)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code §1200.135(b)(5), the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.

**Issued in Chicago, Illinois, this 16th day of April, 2013.**

**STATE OF ILLINOIS  
ILLINOIS LABOR RELATIONS BOARD  
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**Jerald S. Post**  
General Counsel

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	)	
Respondent	)	

**ADMINISTRATIVE LAW JUDGE RECOMMENDED DECISION AND ORDER**

On May 19, 2011 the Charging Party, International Brotherhood of Teamsters, Local 705, filed a charge pursuant to Section 11 of the Illinois Public Labor Relations Act, 5 ILCS (2010) as amended (Act), and the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Adm. Code, Parts 1200 through 1240 (Rules) alleging that the Respondent, Thorn Creek Basin Sanitary District violated Section 10(a)(4) of the Act. The charges were investigated in accordance with Section 11 of the Act and, on June 19, 2012, the Executive Director of the Illinois Labor Relations Board issued a Complaint for Hearing alleging that Respondent committed an unfair labor practice, violating Sections 10(a)(4) and (1) of the Act.

**I. BACKGROUND**

On June 19, 2012, the Complaint for Hearing was issued. The Board received the Respondent's Answer to Complaint on July 2, 2012. This matter was scheduled for hearing Thursday, November 1, 2012. On October 25, 2012, the Respondent filed its pre-hearing memorandum and the Charging Party withdrew its charge.

On November 1, 2012, the Respondent filed its Motion for Sanctions. On November 13, 2012, the Executive Director notified the Respondent of the Charging Party's withdrawal in this

case. On November 19, 2012, the Charging Party filed its Response In Opposition To Respondent's Motion for Sanctions.

## **II. ISSUES AND CONTENTIONS**

The Respondent's Motion for Sanctions alleges the Charging Party made untrue allegations, without reasonable cause, and engaged in frivolous litigation in order to needlessly increase the Respondent's costs. The Respondent requests for the Charging Party to be ordered to pay its incurred fees and costs. The Respondent maintains that the Charging Party made untrue statements when it alleged that the Respondent declared impasse after three negotiation sessions and the declaration to impasse was improper. The Respondent also argues that the Charging Party failed to correct the untrue allegations in the Complaint that the Respondent improperly declared impasse and failed and refused to bargain after June 27, 2011. The Respondent contends that it declared impasse after six negotiation sessions, offered to continue to bargain, and even indicated that it was willing to alter its position, and that the parties met and continued to bargain on five subsequent occasions. Lastly, the Respondent argues that despite the Charging Party's knowledge that the parties were at impasse and continued to bargain, the Charging Party pursued litigation after the Complaint was issued June 18, 2012, causing the Respondent to spend taxpayer funds preparing for hearing.

The Charging Party maintains that the discrepancy in the number of negotiation meetings amount to a disagreement or lack of communication and is not a material allegation required to violate the Act. The Charging Party further contends that its allegation that the Respondent's declaration of impasse was improper was investigated by the Executive Director who determined that there was sufficient basis to issue a complaint. Moreover, the Charging Party argues that the Board does not have the authority to award sanctions based on a party failing to "correct" an

allegation in a complaint and even if it did, there is no reason to do so here because the Respondent admitted the following facts that support the allegations: (1) it would be able to continue negotiations *only after* the Director returned from FMLA leave and (2) it was only willing to meet and bargain on the condition that the Union must first agree to make concessions.

Lastly, the Charging Party argues that the motion should be denied because the Respondent has not offered a basis for a finding that the Charging Party engaged in “frivolous litigation for the purpose of delay or needless increase in...costs.”

### **III. DISCUSSION AND ANALYSIS**

Section 1220.90 of the Rules provide that “the Board’s order may in its discretion include an appropriate sanction, based on the Board’s rules and regulations, if the other party has made allegations or denials without reasonable cause and found to be untrue or has engaged in frivolous litigation for the purpose of delay or needless increase in the cost of litigation.”

In determining whether a party has made false allegations or denials, the Board uses an objective test to ascertain whether the denials or allegations were made with “reasonable cause under the circumstances.” County of Rock Island and Sheriff of Rock Island County, 14 PERI ¶ 2029 (IL SLRB 1998) aff’d Rock Island County v. Illinois Labor Relations Board, 315 Ill. App. 3d. 459 (3d Dist. 2000) (imposing sanctions where respondent argued grievances were untimely filed though respondents were fully equipped with, and in possession of, all of the necessary factual information to know that the grievances were in fact timely) (citing, Fremarek v. John Hancock Mutual Life Ins. Co., 272 Ill. App. 3d 1067 (1st Dist. 1995)). However, the Board has recognized that there are limits on information available to parties and their attorneys at pleading, the early stage of the adjudicative process. Thus, while the Board has reaffirmed Respondents' obligation to answer the allegations of complaints truthfully, it has denied

sanctions based on such limitations even when the Respondent supplied demonstrably false answers which, after full factual development, were not even debatable. City of Bloomington, 26 PERI ¶99 (IL LRB-SP 2010) (declining to impose sanctions based on false pleadings, but imposing sanctions for other reasons). While the Board has sanctioned a party when, without reasonable cause, it made an allegation or denial it should have known was false, the Board has done so where that false statement was an issue litigated during a hearing resulting in a finding on that issue. County of Rock Island, 14 PERI ¶2029 (IL SLRB 1998) aff'd Rock Island County v. Illinois Labor Relations Board, 315 Ill. App. 3d. 459 (3d Dist. 2000).

I reject the Respondent's argument that sanctions should be granted based on false allegations. There is insufficient evidence to show that the allegations were false. The Charging Party argues that although it met six times, the parties only negotiated on three of those sessions. The Charging Party also argues that the Respondent's refusal to continue negotiations until after the Director came back from leave was its basis for alleging that the Respondent refused to continue bargaining, at the very least, for what it deemed a significant amount of time. Under the objective test of "reasonable cause under the circumstances," these allegations do not amount to untrue statements.

Moreover, a Charge is a pleading. The Board is reluctant to grant sanctions based on pleadings. Even though the Board has granted sanctions when allegations have not met the "reasonable cause" standard, it has only done so after false statements were demonstrated after full factual development. City of Bloomington, 26 PERI ¶99. Here, the allegations have not been litigated so I decline to grant sanctions with such limited evidence.

Lastly, the Respondent provides no support that the Charging Party has a duty to correct untrue allegations in a Complaint. Even if it had, there is insufficient evidence to conclude that

the Charging Party's allegations are untrue, and therefore must be corrected. Thus, I reject the Respondent's argument that sanctions should be awarded because the Charging Party made untrue allegations without a reasonable cause.

The Respondent also argues the Charging Party engaged in frivolous litigation. To support its position, the Respondent refers to the Board's decision in Wood Dale Professional Firefighters where the Board held that determining whether a party has engaged in frivolous litigation rests on whether or not the party's allegations or denials were made in good faith or represented a debatable position. Wood Dale Professional Firefighters, 25 PERI ¶136 (ILRB-SP, 2008) *aff'd* Wood Dale Professional Firefighters v. Illinois Labor Relations Board, 395 Ill. App. 3d 523 (2d Dist. 2009). The Respondent also relies on the Board's decision in Illinois Nurses Association and County of Cook which held that a position is not debatable if there is no evidence to support its position. Illinois Nurses Association and County of Cook, 15 PERI ¶3001 1998 WL 35395389 (ILRB September 1998).

I also reject this argument. As with false allegations, I am unwilling to find that the Charging Party's allegations are not debatable without having a hearing where the parties have had the opportunity to provide evidence in support of its positions. Moreover, the Executive Director's issuance of the Complaint, with knowledge of the information the Respondent argues here, presumes the Executive Director rejected said arguments and still found an issue of law or fact sufficient to warrant the issuance of a Complaint.

Lastly, the Respondent has not shown that the Charging Party acted in bad faith. It is clear that the parties merely have a difference in opinion regarding the facts that lead to the Charge. Even if unpersuasive, these differences do not amount to evidence of bad faith. (Wood Dale Fire Protection District v. Illinois Labor Relations Board, 395 Ill. App. 3d 523 (2d Dist.

2009)) (although employer's arguments were unsuccessful, the employer's pursuit of those arguments did not amount to frivolous litigation).

As such, I find that the Charging Party did not engage in frivolous litigation and deny the Respondent's Motion for Sanctions.

## **VI. CONCLUSION OF LAW**

The Charging Party, International Brotherhood of Teamsters, Local 705 did not make false allegations or denials, without reasonable cause, that were found to be untrue or engage in frivolous litigation in violation of Section 1220.90 of the Rules.

## **V. RECOMMENDED ORDER**

IT IS HEREBY ORDERED that Thorn Creek Basin Sanitary District's Motion for Sanctions be denied.

## **VI. 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 the 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 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 18th day of January, 2013**

**STATE OF ILLINOIS  
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**Elaine L. Tarver  
Administrative Law Judge**