STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

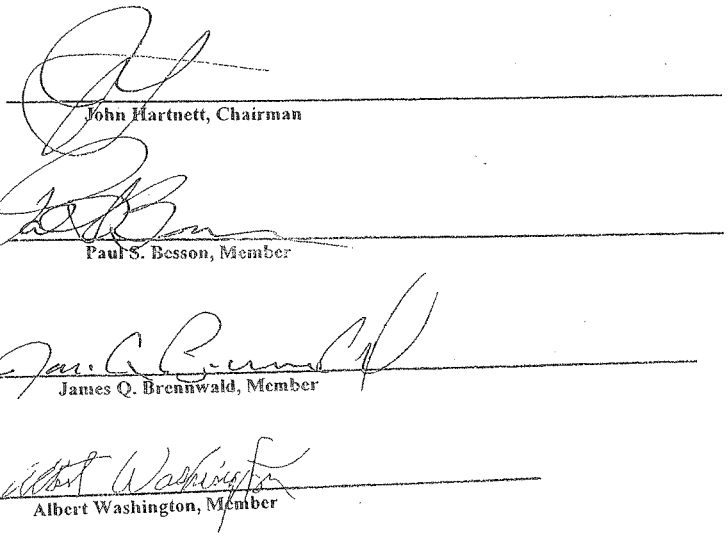
Service Employees International Union, Local 73,	)	
Charging Party	)	
and	)	Case No. S-CA-12-159
City of Waukegan,	)	
Respondent	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD STATE PANEL

On August 28, 2012, Executive Director Melissa Mlynski issued an order deferring to arbitration 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)(1), (2), and (4) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010) as amended when the Respondent issued a one-day suspension to Al Booth in retaliation for engaging in union activity and failed to provide the Charging Party with information upon request.

On September 7, 2012, the Charging Party filed a timely appeal of the Executive Director's deferral order pursuant to Section 1200.135 of the Illinois Labor Relations Board's Rules and Regulations, 80 Ill. Admin. Code, Parts 1200 through 1240. After reviewing the record and the appeal, we uphold the Executive Director's order deferring this matter to arbitration.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD[1]



John Hartnett, 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 January 8, 2013, written decision issued in Chicago, Illinois on January 28, 2013.

[1] Member Coli did not participate in the determination of this case.

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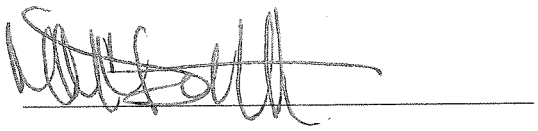
AFFIDAVIT OF SERVICE

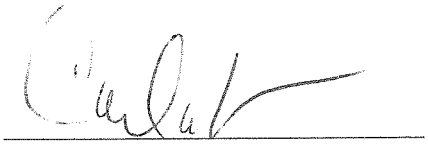
I, Missy McDermott, on oath state that I have this 28th day of January 2013, served the attached **DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD STATE PANEL** issued in the above-captioned case on each of the parties listed herein below by depositing, before 5:00 p.m., copies thereof in the United States mail at 100 W Randolph Street, Chicago, Illinois, addressed as indicated and with postage prepaid for first class mail.

Susan Matta
SEIU, Local 73
300 S Ashland Ave, Suite 400
Chicago, IL 60601

David Lefkow
Klein, Thorpe & Jenkins
20 N Wacker Drive, Suite 1660
Chicago, IL 60606



SUBSCRIBED and **SWORN** to
before me this **28th day**
of January 2013.



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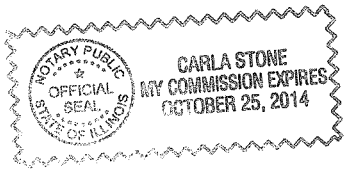

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City of Waukegan,	)	
	)	
Respondent	)	

EXECUTIVE DIRECTOR'S DEFERRAL TO ARBITRATION

On April 24, 2012, the Service Employees International Union, Local 73 (Charging Party or Union) filed a charge in Case No. S-CA-12-159 with the State Panel of the Illinois Labor Relations Board (Board), alleging that the City of Waukegan (Respondent or Employer) engaged in unfair labor practices within the meaning of Section 10(a)(2) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), *as amended* (Act). After an investigation conducted in accordance with Section 11 of the Act, I determined that the charge should be deferred until the parties have exhausted the contractual grievance process.

I. INVESTIGATORY FACTS

The Union represents a bargaining unit composed of civilian employees in the City. The most recent contract for the unit had a term of May 1, 2008 through April 30, 2010. One of the local union stewards is a man named Al Booth. The charge concerns the circumstances connected to the Respondent's imposition of a one-day suspension on Booth.[1]

By all accounts, Booth's supervisor approached him on November 8, 2011, and requested that he attend a meeting. The supervisor advised Booth that he could have union representation at the

[1] The original charge also included a claim that the Respondent violated the Act by failing to provide information requested by the Union. By email dated August 17, 2012, the Union withdrew that portion of the charge.

meeting, and the parties eventually postponed the meeting one day so that a representative from the Union could attend. By the Union's account, on November 9, the Employer advised Booth that he was under investigation, but did not detail the circumstances. However, the employer's representatives did question Booth concerning his email usage.

On November 9, 2011, the Union filed a request for information in connection with the pending discipline against Booth. The request sought any documents relied upon in the disciplinary process, as well as the pertinent policies and procedures for employees. The Union asserted in the charge that the Employer had failed to provide that information. According to the City's position statement, the Respondent's HR director, sent a reply email to the Union advising it that Booth had been investigated because of a citizen complaint concerning an email sent from his work account. There is no evidence that the Respondent forwarded any documents to the Union at that time.

On November 15, 2011, the Respondent issued Booth a one day suspension. The Union initiated a grievance concerning the discipline on December 7, 2011. The grievance is pending in the contractual process, specifically at the arbitration stage.

II. POSITIONS OF THE PARTIES

The Union asserts that the Employer violated the Act by disciplining Booth, insofar as the discipline was retaliation for his union activities. The Union relies upon the fact that other employees engaged in similar infractions of the email policy and did not receive any punishment. The Respondent asserts that Booth received discipline for cause, and the punishment was not related to his union activity. The Respondent requests dismissal of the charge, or alternatively deferral.

The Union opposed deferral of the charge as part of the filings in the initial phase of the investigation. Essentially, it asserts that deferral is not appropriate in cases involving retaliation for the exercise of statutory rights, as that claim may not arise during the course of the arbitration proceeding.

Further, the Union asserts that protection of statutory rights is uniquely within the Board's province, and should not be delegated to an arbitrator.

III. DISCUSSION AND ANALYSIS

In City of Mt. Vernon, 4 PERI ¶2006 (IL SLRB 1988), the then-State Board adopted a policy of deferring charges involving the application or interpretation of collective bargaining agreements. In that case, the Board listed the primary deferral doctrines employed by the National Labor Relations Board (NLRB). Each of these policies is known by the lead case in the area, namely, Spielberg Manufacturing Co., 112 NLRB 1080 (1955); Dubo Manufacturing Corp., 142 NLRB 431 (1963); and Collyer Insulated Wire, 192 NLRB 837 (1971). Spielberg concerns deferral to an existing arbitration award. Dubo applies in cases where the union has voluntarily initiated a grievance. Collyer concerns cases where the union has not initiated a contract grievance. The Local Panel has also adopted these deferral doctrines. See, e.g., City of Chicago, 10 PERI ¶3001 (IL LLRB 1993).

This charge is comparable to the deferral situation in Dubo. The Union has initiated a grievance, and the parties are prepared to arbitrate the matter. While the Union opposes deferral on the basis of the asserted statutory issues implicated in the Respondent's conduct, the Board routinely defers alleged 10(a)(2) claims. The Union clearly believes that deferral is not appropriate in this case; however, it does not assert a basis for departing from the Board's established procedures in connection with the instant charge. Under these circumstances, I find that it is appropriate to defer this charge to the agreement's grievance procedure.

IV. ORDER

Accordingly, further processing of the charge will be deferred until the parties have completed the process in the above-referenced grievances. Within 15 days after the termination

of the contractual procedure, the Charging Party may request that the Board reopen the case for the purpose of resolving any substantial issues left unresolved by the grievance procedure or proceed with the charge on the basis that the award is contrary to the policies underlying the Act. The Board will review any request to reopen the charge in conformance with the Spielberg doctrine. If the Charging Party fails to make such a request within the time specified, the Board may dismiss this charge upon request of the Respondent or on its own motion.

This order may be appealed to the Board any time within 10 days of service hereof. The appeal must be made in writing, contain the case caption and number, and must be addressed to the Board's General Counsel, 160 North LaSalle Street, Suite S-400, Chicago Illinois, 60601-3103. The appeal must contain detailed reasons in support thereof, and be served upon all other parties at the same time that it is served upon the Board. A statement asserting that all other parties have been served must accompany an appeal, or the Board will not consider it. If the Board does not receive an appeal within the specified time, this order shall become final and binding upon the parties to this matter.

Issued in Springfield, Illinois, this 28th day of August, 2012.

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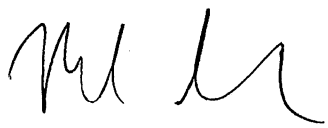

Melissa Mlynski, Executive Director