

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

American Federation of State, County)	
and Municipal Employees, Council 31,)	
)	
Charging Party)	
)	
and)	Case No. S-CA-13-052
)	
Peoria Housing Authority,)	
)	
Respondent)	

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

On April 19, 2013, Executive Director Melissa Mlynski issued a dismissal of two unfair labor practice charges filed by the American Federation of State, County and Municipal Employees, Council 31 (Charging Party) against the Peoria Housing Authority (Respondent). The first charge, Case No. S-CA-12-052 filed on October 26, 2012, alleged violations of Sections 10(a)(7) and (1) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010) as amended (Act), by making regressive changes to proposals intended to stall the bargaining process. The second charge, Case No. S-CA-12-068, was filed on December 17, 2012 and alleged that Respondent violated Section 10(a)(4) and (1) of the Act by failing to meet at reasonable times and places.¹ On May 6, 2013, Charging Party timely filed an appeal of the dismissal of the first charge, Case No. S-CA-12-052, pursuant to Section 1200.135 of the

¹ Charging Party also filed a third charge on December 17, 2012, alleging in Case No. S-CA-12-070 that Respondent violated the Act by unilaterally implementing its last, best and final offer without first either concluding negotiations or reaching impasse. The Executive Director issued a complaint for hearing in that case.

Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200 through 1240 (Board's Rules).² Respondent did not file a response. After a review of Charging Party's appeal and the record, we reverse the Executive Director's dismissal.

The Executive Director dismissed the charge in Case No. S-CA-13-052 after finding it had not been filed within six months as required by Section 11(a) of the Act and Section 1220.20(d) of the Board's rules. She noted that in its charge the Charging Party tied its allegations of regressive bargaining to changes made to Respondent's original proposal on March 28, 2012. The charge was filed on October 26, 2012, just short of seven months after the date provided for this event.

In its appeal, Charging Party asserts that the March 28 date on its charge form was in error, and that the real date of the changes at issue was June 28, 2012. It attaches as exhibits and cites to four communications it made with the investigator referencing June 28 as the relevant date. The relevant portion of Exhibit 3 states: "The first charge is that after 8 months of negotiations the employer engaged in regressive bargaining when they introduced the more restrictive sub contracting language of 2.17 as compared to the 6/28/12 language they proposed and maintained for the 8 months prior." The relevant portion of Exhibit 4 states: "6 28, 2012 Employer presented new language to 2.17 which was far more restrictive on subcontracting that they had introduced before." Exhibits 5 and 6 provide very different versions of the subcontracting language of section 2.17. Charging Party states that Exhibit 5 shows the language proposed on March 20, 2012, while Exhibit 6 shows language proposed on June 28, 2012. Charging Party seeks reversal of the dismissal and remand for further investigation.

² Charging Party did not appeal the dismissal of the second charge in Case No. S-CA-12-068.

Measured solely by the date stated on the charge form, the Executive Director was right to dismiss the charge as untimely and Charging Party, responsible for supplying that date, has little basis to complain about that result; however, there is sufficient evidence in the record to suggest this date was merely a clerical error, and that should have prompted the investigator to resolve the inconsistency between the date stated and the date evidenced. The actual date of the alleged regressive bargaining repeatedly referenced by Charging Party during the course of the investigation is June 28, 2012, and the charge was filed less than four months after that date. For this reason, we reject the Executive Director's basis for the dismissal and remand for further investigation.

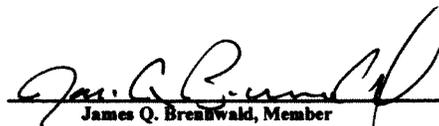
BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD



John Hartnett, Chairman



Paul S. Besson, Member



James Q. Breenwald, Member



Michael G. Coll, Member



Albert Washington, Member

Decision made at the State Panel's public meeting in Springfield, Illinois on June 11, 2013; written decision issued in Chicago, Illinois on June 28, 2013.

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American Federation of State, County, and Municipal Employees, Council 31,)		
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Charging Party)		
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and)	Case Nos.	S-CA-13-052
)		S-CA-13-068
Peoria Housing Authority,)		
)		
Respondent)		

DISMISSAL

On October 26, 2012, and December 17, 2012, the Charging Party, American Federation of State, County, and Municipal Employees, Council 31 (Union or AFSCME), filed unfair labor practice charges with the State Panel of the Illinois Labor Relations Board in the above captioned cases. The charges allege that Respondent, Peoria Housing Authority (Employer or PHA), engaged in unfair labor practices within the meaning of Section 10(a) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2010), *as amended*. After an investigation conducted in accordance with Section 11 of the Act, I have determined that the charges fail to raise an issue of fact or law sufficient to warrant a hearing and hereby issue this dismissal for the reasons set forth below.

I. INVESTIGATORY FACTS

Respondent is a public employer within the meaning of Section 3(o) of the Act. Charging Party is a labor organization within the meaning of Section 3(i) of the Act, and the exclusive representative of a bargaining unit comprised of Respondent's employees as recognized in Article I of the collective bargaining agreement (CBA). The most recent CBA

expired on December 31, 2011. The parties began bargaining for a successor agreement on or about November 4, 2011.

Charging Party filed Case No. S-CA-13-052 on October 26, 2012, alleging that Respondent violated Section 10(a)(7) and (1) of the Act by making changes to their original proposal that were regressive in nature and intended to stall the bargaining process. Charging Party asserts that this alleged violation took place on March 28, 2012.

In documents provided by both the Union and PHA during the course of the investigation, it was shown that between November 4, 2011, and November 13, 2012, the parties met 23 times. Specifically, between November 4, 2011, and May 1, 2012, the parties met 12 times before jointly agreeing to the assistance of a mediator. Between June 1, 2012, and November 13, 2012, the parties and the mediator met an additional 11 times. During these meetings, the parties exchanged proposals, some of which were tentatively agreed to.

On October 18, 2012, the parties met, but this meeting did not produce an agreement. At this point, PHA declared impasse and submitted a “last, best, and final offer” to the Union, and notified the Union that the agreement would be implemented on November 6, 2012. The Union reacted by suggesting another meeting.

The parties agreed to meet on October 31, 2012. However, rather than presenting contract proposals, the Union submitted requests for information. PHA complied with these requests. The Union later submitted a proposal package which contained some items of interest to the PHA, sufficient enough to break impasse declared by PHA on October 18, 2012. The parties agreed to meet on November 2, 2012. However, the Union did not attend the November 2, 2012 meeting due to a scheduling conflict.

Following this, the Union threatened a strike vote, and suggested another meeting on November 13, 2012. At the outset of the meeting, the Union did not present a proposal, but again submitted a request for information. Later, the Union presented to PHA a package proposal, described by PHA as “all or nothing.” PHA rejected the Union proposal and notified the mediator and AFSCME that the parties were at impasse. The Union disputed the declaration of impasse, and responded with the suggestion to meet after the upcoming Thanksgiving holiday, but the PHA countered with the offer to meet on November 14, 15, or 16, 2012. AFSCME did not respond. On November 16, 2012, again determining the negotiations to be at impasse, PHA sent the Union its second last, best, and final offer, and notified the Union that it would be implemented on December 3, 2012. The PHA then implemented the CBA on December 3, 2012.

Charging Party filed Case No. S-CA-13-068 on December 17, 2012, alleging that Respondent violated Section 10(a)(4) and (1) of the Act because it failed to meet at reasonable times and places. Charging Party asserts that this alleged violation took place on December 3, 2012.¹

II. DISCUSSION AND ANALYSIS

In Case No. S-CA-13-052, the Charging Party alleges a violation of Section 10(a)(7) of the Act, which makes it an unfair labor practice for an employer “to refuse to reduce a collective bargaining agreement to writing or to refuse to sign such agreement.” However, in its explanation of the charge, the Union alleges that PHA engaged in bad faith bargaining by making changes to its original proposal and that those changes were regressive in nature and

¹ On December 17, 2012, the Charging Party also filed Case No. S-CA-13-070, alleging that Respondent violated the Act by unilaterally implementing their last, best and final offer without first concluding contract negotiations and without the parties having reached impasse. A Complaint for Hearing has been issued in that case.

intended to stall the bargaining process. As noted above, the Union identifies March 28, 2012 as the date of occurrence for this charge.

This charge should be dismissed as untimely. Section 11(a) of the Act provides, in part, "...no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of a charge with the Board and the service of a copy thereof, upon the person against whom the charge is made." Section 1220.20(d) of the Rules require that unfair labor practice charges must be filed with the Board, and served on the respondent, no later than six months after the alleged unfair labor practice occurred. The Union alleges that the Employer's conduct occurred on March 28, 2012; however, the charge was not filed until October 26, 2012, more than six months later.

As for Case No. S-CA-12-068, the Union alleges that PHA engaged in unfair labor practices within the meaning of Section 10(a)(4) of the Act by refusing to meet at reasonable times and places. The Union has not presented evidence to support this allegation. In fact, the available evidence indicates that the parties met on approximately 23 occasions between November of 2011 and November of 2012.²

III. ORDER

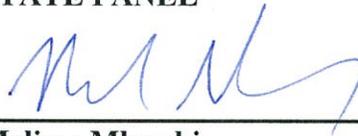
Accordingly, the instant charges are hereby dismissed. Charging Party may appeal this dismissal to the Board at any time within 10 calendar days of service hereof. Any such appeal must be in writing, contain the case caption and number, and be addressed to the General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103. Appeals will not be accepted in the Board's Springfield office. In addition,

² Charging Party asserts that this alleged violation took place on December 3, 2012. It should be noted that December 3, 2012 is the date that the Respondent implemented the CBA, after previously declaring impasse. Again, whether the Respondent violated the Act by declaring impasse and implementing the CBA is the subject of a separate charge (S-CA-13-070).

any such appeal must contain detailed reasons in support thereof, and the party filing the appeal must provide a copy of its appeal to all other persons or organizations involved in this case at the same time the appeal is served on the Board. The appeal sent to the Board must contain a statement listing the other parties to the case and verifying that a copy of the appeal has been provided to each of them. An appeal filed without such a statement and verification will not be considered. If no appeal is received within the time specified herein, this dismissal will become final.

Issued in Springfield, Illinois, this 19th day of April, 2013.

**STATE OF ILLINOIS
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STATE PANEL**



**Melissa Mlynski
Executive Director**