STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Local 722,	)	
	)	
Charging Party	)	
	)	
and	)	Case No S-CA-13-145
	)	
Lee County Circuit Clerk,	)	
	)	
Respondent	)	

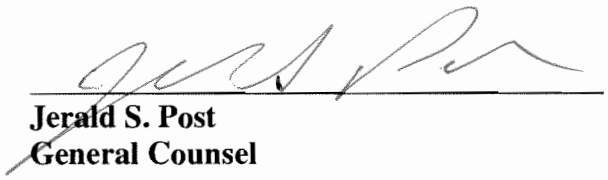
ORDER

On October 22, 2013 Administrative Law Judge Michelle N. Owen, 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 January 16, 2014 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the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.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 17th day of January 2014.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL



Jerald S. Post
General Counsel

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Teamsters, Local 722,	)	
	)	
Charging Party	)	
	)	Case No. S-CA-13-145
and	)	
	)	
Lee County Circuit Clerk,	)	
	)	
Respondent	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On April 1, 2013, Teamsters, Local 722 (Charging Party), filed an unfair labor practice charge with the State Panel of the Illinois Labor Relations Board (Board), pursuant to Section 11 of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), as amended (Act), and the Board's Rules and Regulations, 80 Ill. Admin. Code, Parts 1200 through 1240 (Rules). The charge was investigated in accordance with Section 11 of the Act, and on July 31, 2013, the Board's Executive Director issued a complaint for hearing. The complaint alleges that the Lee County Circuit Clerk (Respondent) violated Section 10(a)(4) and (1) of the Act when it transferred and/or assigned bargaining unit work, bookkeeping duties, outside of the bargaining unit without providing notice to Charging Party or offering it the opportunity to bargain.

I. BACKGROUND

According to the affidavit of service attached to the complaint for hearing, the Board mailed a copy of the complaint to Respondent's attorney by U.S. mail on July 31, 2013.[1] The complaint contained the following statement:

[1] At all times material, Attorney Anna Sacco-Miller has been the attorney of record for Respondent.

> **THE RESPONDENT IS HEREBY NOTIFIED** that pursuant to Section 1220.40(b) of the Board's Rules and Regulations, it must file an Answer to this Complaint with Michelle Owen, 160 N. LaSalle St., Ste. S-400, Chicago, IL 60601, and serve a copy thereof upon the Charging Party within 15 days after service of the Complaint upon it. Said Answer shall include an express admission, denial, or explanation of each and every allegation of this Complaint. **Failure to specifically respond to an allegation shall be deemed an affirmative admission of the facts or conclusions alleged in the allegation. Failure to timely file an Answer shall be deemed an admission of all material facts or legal conclusions alleged and a waiver of hearing. The filing of any motion or other pleading will not stay the time for filing an Answer.**

Section 1200.30(c) of the Rules provides that a document is presumed served on a party three days after it is mailed. Service on Respondent was therefore presumed effective on Monday, August 5, 2013. Under Section 1220.40(b) of the Rules, Respondent was required to submit an answer to the complaint within 15 days of service. Thus, a timely answer should have been postmarked by Tuesday, August 20, 2013. Respondent did not file an answer by that date.

On October 11, 2013, I issued to Respondent an Order to Show Cause not later than October 23, 2013, why a default judgment consistent with Section 1220.40(b) of the Rules should not issue. On October 18, 2013, Respondent filed its response to the Order. In its response, Respondent's attorney acknowledges receipt of the Complaint on August 5, 2013, and states that that she was unable to respond to the Complaint on or before August 20, 2013 due to illness. Respondent states that it is aware of Section 1220.40(b) of Board's Rules and the effect of failing to file an answer to the Complaint in a timely fashion. Respondent contends that based upon the timing of the receipt of the Complaint, Respondent's attorney's illness, and the Administrative Code, Respondent did not file an Answer as it would have been late.

II. DISCUSSION AND ANALYSIS

The issue is whether the Board should grant Respondent leave to file a late answer pursuant to Section 1220.40(b)(4), or a variance from the application of Section 1220.40(b)(3) pursuant to Section 1200.160.

Section 1220.40(b) of the Board's Rules provides that:

> Whenever the Executive Director issues a complaint for hearing, the respondent shall file an answer within 15 days after service of the complaint and deliver a copy to the charging party by ordinary mail to the address set forth in the complaint. Answers shall be filed with the Board with attention to the designated Administrative Law Judge.
>
> 1) The answer shall include a specific admission, denial or explanation of each allegation or issue of the complaint or, if the respondent is without knowledge thereof, it shall so state and such statement shall operate as a denial. Admissions or denials may be made to all or part of an allegation but shall fairly meet the circumstances of the allegation.
>
> 2) The answer shall also include a specific, detailed statement of any affirmative defenses.
>
> 3) Parties who fail to file timely answers shall be deemed to have admitted the material facts and legal conclusions alleged in the complaint. The failure to answer any allegation shall be deemed an admission of that allegation. Failure to file an answer shall be cause for the termination of the proceeding and the entry of an order of default. Filing of a motion will not stay the time for filing an answer.

This rule has been strictly construed by the Board and courts, which have consistently held that a respondent's failure to timely file an answer to a complaint results in admissions of all allegations in the complaint and an entry of default judgment. Wood Dale Fire Prot. Dist. v. Ill. Labor Relations Bd., 395 Ill. App. 3d 523 (2nd Dist. 2009), aff'g Wood Dale Fire Prot. Dist., 25 PERI ¶136 (IL LRB-SP 2008); Metz v. Ill. State Labor Relations Bd., 231 Ill. App. 3d 1079 (5th Dist. 1992), aff'g Circuit Clerk of St. Clair Cnty., 6 PERI ¶2036 (IL SLRB 1990); Peoria Hous. Auth., 11 PERI ¶2033 (IL SLRB 1995); Chicago Hous. Auth., 10 PERI ¶3010 (IL LLRB 1994);

Cnty. of Jackson (Jackson Cnty. Nursing Home), 9 PERI ¶2025 (IL SLRB 1993); City of Springfield, Office of Pub. Utils., 9 PERI ¶2024 (IL SLRB 1993).

A. Leave to File a Late Answer

Section 1220.40(b)(4) of the Rules provides that "[l]eave to file a late answer shall only be granted by the Administrative Law Judge if the late filing is due to extraordinary circumstances, which will include among other things: fraud, act or concealment of the opposing party, or other grounds traditionally relied upon for equitable relief from judgments."

Respondent concedes that it did not timely file an Answer. Moreover, it raises no argument that under the Board's Rules in Section 1220.40(b) default does not result in such circumstances. Respondent states that it was unable to file a timely Answer due to illness. Respondent does not allege fraud, concealment, or other grounds traditionally relied upon for equitable relief from judgments. The failure of a party's legal representative to meet a deadline due to simple inattention does not constitute an extraordinary circumstance under Section 1220.40(b)(4). First Transit/River Valley Metro, 26 PERI ¶38 (IL LRB-SP 2010), aff'd by unpub. order, 27 PERI ¶61 (Ill. App. Ct., 3rd Dist., 2011); City of Markham, 27 PERI ¶7 (IL LRB-SP 2011). Respondent has not show any mitigating circumstances establishing that the late filing was due to extraordinary circumstances.

B. Request for a Variance

A variance of any provision of the Rules is permitted by Section 1200.160, which states:

> The provisions of this part or 80 Ill. Adm. Code 1210, 1220 or 1230 may be waived by the Board when it finds that:
> a) The provision from which the variance is granted is not statutorily mandated;
> b) No party will be injured by the granting of the variance; and
> c) The rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome.

All three prongs must be satisfied for the variance to be entertained by the Board. A party's excuses, explanations, and mitigating circumstances must also be considered in deciding whether strict adherence to the rule would be unreasonable or unnecessarily burdensome. Wood Dale, 395 Ill. App. 3d at 532-33; Amalgamated Transit Union, Local 241, 29 PERI ¶78 (IL LRB-LP 2012).

Here, the first requirement of Section 1200.160 is met because the 15-day filing rule in Section 1220.40(b) is not statutorily mandated. The second requirement is satisfied because neither party will be injured merely because Respondent's untimely answer frustrates the public policy favoring the speedy resolution of labor disputes. Cook Cnty. State's Attorney, 292 Ill. App. 3d at 7. However, the third element is not satisfied because strict compliance with the time limit for filing an answer is not unreasonable or unnecessarily burdensome in this case. Respondent's attorney contends that she was unable to file a timely answer because of illness. The failure of Respondent to file a timely answer appears to be due to simple inattentiveness, which is not a sufficient ground for granting a variance. Wood Dale, 395 Ill. App. 3d at 530. Further, the Board has upheld default judgments in similar circumstances. See Vill. of Dolton, 17 PERI ¶2017 (IL LRB-SP 2001) (answer late due to docketing error arising from office personnel changes); City of Markham, 17 PERI ¶2036 (IL LRB-SP 2001) (answer late due to attorney misreading due date for answer); Vill. of Maywood, 21 PERI ¶147 (IL LRB-SP ALJ 2005) (answer late due to office turmoil).

Without any sufficient mitigating circumstances excusing Respondent's untimely answer, a variance is not warranted. The complaint fully informed Respondent of the required filing period for an answer and the consequences for not complying. As noted previously, the Board has consistently held that an entry of default judgment is appropriate in such circumstances.

Thus, I find that Respondent has admitted the material facts and legal conclusions alleged in the complaint, and waived its right to a hearing in this matter.

III. RESPONDENT'S ADMISSIONS

By failing to file an answer, Respondent has admitted the following material facts and legal allegations as stated in the complaint:

1. At all times material, Respondent has been a public employer within the meaning of Section 3(o) of the Act.

2. At all times material, Respondent has been a unit of local government under the jurisdiction of the State Panel of the Board, pursuant to Sections 5(a) and 20(b) of the Act.

3. At all times material, Charging Party has been a labor organization within the meaning of Section 3(i) of the Act and the exclusive bargaining representative of a unit of all full-time and part-time employees employed by the Lee County Circuit Clerk's Office at its Dixon, Illinois facility in the title of Deputy Clerk, Chief Deputy and Bookkeeper as certified by the Board in Case No. S-RC-97-013 on October 23, 1996 (Unit).

4. At all times material, Respondent and Charging Party have been parties to a collective bargaining agreement (Agreement) covering the Unit.

5. Since November of 2012, Respondent has employed Kristy Erdahl to perform duties in the title or classification of Bookkeeper and duties related to its Information Technology (IT) Department.

6. By its actions described in paragraph 5, Respondent has transferred and/or assigned bargaining unit work (bookkeeping duties) outside of the Unit.

7. The transfer and or the assignment of bargaining unit duties outside the Unit relates to wages, hours, and/or working conditions and is thereby a mandatory subject of bargaining.

8. Respondent took the action described in paragraphs 5 and 6 without providing notice to Charging Party or offering it the opportunity to bargain.

9. By its acts and conduct as described in paragraphs 5, 6 and 8, Respondent failed and refused to bargain in good faith with Charging Party, in violation of Section 10(a)(4) and (1) of the Act.

IV. CONCLUSIONS OF LAW

Respondent violated Section 10(a)(4) and (1) of the Act when it, since November of 2012, employed Kristy Erdahl to perform duties in the title or classification of Bookkeeper and duties related to its IT Department and thereby transferred and/or assigned bargaining unit work outside of the Unit without providing notice to Charging Party or offering it the opportunity to bargain.

V. RECOMMENDED ORDER

IT IS HEREBY ORDERED that Respondent, Lee County Circuit Clerk, its officers and agents shall:

1. Cease and desist from:

(a) transferring and/or assigning bargaining unit work (bookkeeping duties) outside of the bargaining unit without providing notice to Charging Party or offering it the opportunity to bargain;

(b) failing and refusing to bargain in good faith with Charging Party;

(c) in any like or related manner, interfering with, restraining, or coercing its employees in the exercise of their rights under the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) On request, bargain in good faith with Charging Party, with respect to transferring and/or assigning bargaining unit work outside of the bargaining unit.

(b) Restore the bookkeeping duties assigned to non-bargaining unit members to the bargaining unit that includes Teamsters, Local 722 members until such time as it bargains to agreement or legitimate impasse with the Charging Party.

(c) Make whole members of the bargaining unit for lost wages beginning from the date of hire and use of non-bargaining unit members to perform bargaining unit work until the date of restoring the status quo ante, with interest, as required by the Act.

(d) Prior to implementation, give reasonable notice to Charging Party of any proposed changes that affect wages, hours or terms and conditions of employment of employees represented by Charging Party, and upon request of Charging Party, bargain in good faith over those changes.

(e) Preserve, and upon request, make available to the Board or its agents for examination and copying all records, reports and other documents necessary to analyze the relief due under the terms of this decision.

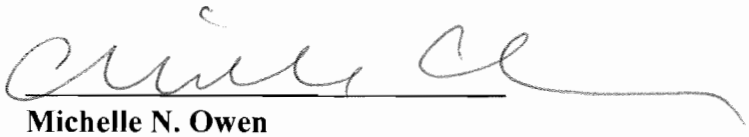
(f) Post at all places where notices to employees are normally posted, copies of the notice attached hereto and marked "Addendum." Copies of this Notice shall be posted, after being duly signed, in conspicuous places, and be maintained for a period of 60 consecutive days. Respondent will take reasonable efforts to ensure that the notices are not altered, defaced or covered by any other material.

(g) Notify the Board in writing, within 20 days from the date of this Decision and Order, of the steps Respondent has taken to comply herewith.

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 this 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 General Counsel of the Illinois Labor Relations Board 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/or 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 22nd day of October, 2013.



Michelle N. Owen
Administrative Law Judge
Illinois Labor Relations Board

NOTICE TO EMPLOYEES

FROM THE
ILLINOIS LABOR RELATIONS BOARD

The Illinois Labor Relations Board has found that the Lee County Circuit Clerk violated the Illinois Public Labor Relations Act and has ordered us to post this Notice. We hereby notify you that:

The Illinois Public Labor Relations Act gives you, as an employee, these rights:

To engage in protected, concerted activity.
To engage in self-organization.
To form, join, or assist unions.
To bargain collectively through a representative of your own choosing.
To act together with other employees to bargain collectively or for other mutual aid or protection.
And, if you wish, not to do any of these things.

Accordingly, we assure you that:

WE WILL NOT transfer and/or assign bargaining unit work (bookkeeping duties) outside of the bargaining unit without providing notice to Teamsters, Local 722 or offering it the opportunity to bargain.

WE WILL NOT fail and/or refuse to bargain in good faith with Teamsters Local 722.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of their rights under the Act.

WE WILL on request, bargain in good faith with Teamsters Local 722, with respect to transferring and/or assigning bargaining unit work outside of the bargaining unit.

WE WILL restore the bookkeeping duties assigned to non-bargaining unit members to the bargaining unit that includes Teamsters, Local 722 members until such time as we bargain to agreement or legitimate impasse with Teamsters, Local 722.

WE WILL make whole members of the bargaining unit for lost wages beginning from the date of hire and use of non-bargaining unit members to perform bargaining unit work until the date of restoring the status quo ante, with interest, as required by the Act.

WE WILL prior to implementation, give reasonable notice to Teamsters Local 722 of any proposed changes that affect wages, hours or terms and conditions of employment of employees represented by Teamsters Local 722, and upon request of Charging Party, bargain in good faith over those changes.

WE WILL preserve, and upon request, make available to the Board or its agents for examination and copying, all records, reports and other documents necessary to analyze the amount of relief due under the terms of this decision.

This notice shall remain posted for 60 consecutive days at all places where notices to employees are regularly posted.

_____	_____
Date of Posting	Lee County Circuit Clerk (Employer)

ILLINOIS LABOR RELATIONS BOARD

One Natural Resources Way, 1st Floor
Springfield, Illinois 62702-1271
(217) 785-3155

160 North LaSalle Street, Suite S-400
Chicago, Illinois 60601-3103
(312) 793-6400

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED.