

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

Troopers Lodge #41, Fraternal Order)	
of Police,)	
)	
Charging Party)	
)	
and)	Case No. S-CA-13-148
)	
State of Illinois, Department of Central)	
Management Services (State Police),)	
)	
Respondent)	

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

On December 4, 2014, Executive Director Melissa Mlynski dismissed the charge filed in the above-captioned case. She noted the case had previously been deferred to arbitration, and although Charging Party subsequently submitted to the Board a copy of the arbitrator's decision, it had not asked to reopen the case. Charging Party, Troopers Lodge #41, Fraternal Order of Police, appeals that dismissal to the Illinois Labor Relations Board, State Panel, pursuant to Section 1200.135(a) of the Board's Rules and Regulations, 80 Ill. Admin. Code §1200.135(a).¹ Respondent, State of Illinois Department of Central Management Services (State Police) (Respondent or CMS) filed a response. We affirm dismissal of the charge for the reason given by the Executive Director.

The underlying charge, filed on June 20, 2013, alleged that Respondent violated Section 10(a)(4) of the Illinois Public Labor Relations Act, 5 ILCS 315/10(a)(4) (2012), by declining to engage in collective bargaining over health care plan changes for employees represented by

¹ Charging Party requested and received an extension of time to file the appeal until January 2, 2015.

Charging Party and annuitants under the Illinois Pension Code. Respondent moved to defer resolution of the matter to grievance arbitration proceedings, and the Executive Director granted that motion on December 31, 2013, finding deferral appropriate pursuant to Dubo Mfg. Corp., 142 NLRB 431 (1963). See City of Mt. Vernon, 4 PERI ¶2006 (IL SLRB 1988) (adopting deferral policies used by the National Labor Relations Board). She deferred the charge “to the parties’ grievance procedure until they have completed that process regarding the underlying dispute.” Consistent with established practice, the Executive Director’s Deferral to Arbitration also included the following provision allowing reopening within a specified period:

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. 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.

Six months after the deferral to arbitration, on July 19, 2014, Arbitrator Harvey A. Nathan issued the related grievance arbitration award.

Board agents periodically reach out to parties to inquire about the status of arbitration in deferred cases, and on September 3, 2014, Board Agent Lori Novak sent an email to counsel for Charging Party and Respondent, asking them to advise her about the status of the grievance arbitration. Charging Party responded on Friday September 5, 2014, by submitting Arbitrator Nathan’s award via both email and regular mail, under a cover letter signed by counsel for Charging Party. The cover letter simply stated: “Enclosed please find a copy of the decision issued by Arbitrator Harvey Nathan in the above referenced matter. If you have any questions, please do not hesitate to contact me.”

Novak promptly sent another email, asking if she could “consider this email as Charging Party’s withdrawal of the unfair labor practice charge?” Late that afternoon counsel’s assistant responded, stating that counsel needed to consult with his client. Three months later, on December 2, 2014, Novak sent yet another email to Charging Party’s counsel, asking how it wished to proceed. Counsel responded later that day with a single word: “Yes.” Novak asked: “Do you mean ‘yes, you wish to withdraw the charge?’” Then, within very close if not overlapping time frames, Counsel sent these words: “No withdraw[a]l” and Novak sent these words: “What are you answering ‘yes’ to?”

As previously noted, the Executive Director dismissed the charge on December 31, 2014, observing that Charging Party had not asked to reopen the case.

In its appeal, Charging Party claims “it should be clear from the record of email exchanges that the Lodge did not want to withdraw and was still considering how it would handle this matter, especially in light of the arbitration decision.” Conflating conceptually separate issues, it states the only issue in the appeal “is whether Charging Party sought to withdraw and not to reopen the case,” and that once the Executive Director knew Charging Party did not want to withdraw the case, it was not appropriate to dismiss it.

We find dismissal perfectly appropriate under these circumstances. The Executive Director’s Deferral to Arbitration was very clear: the Charging Party could ask that the case be reopened if it did so within 15 days of issuance of the arbitration award. Charging Party did not ask to have the case reopened within that time frame; indeed, it never asked that the case be reopened. We affirm dismissal of the charge.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ John J. Hartnett
John J. Hartnett, Chairman

/s/ James Q. Brennwald
James Q. Brennwald, Member

/s/ Albert Washington
Albert Washington, Member

Decision made at the State Panel's public meeting in Chicago and Springfield, Illinois on February 10, 2015, written decision issued in Chicago, Illinois on February 13, 2015.

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STATE OF ILLINOIS
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Troopers Lodge #41, Fraternal Order of Police,

Charging Party

and

State of Illinois, Department of Central
Management Services (State Police),

Respondent

Case No. S-CA-13-148

DISMISSAL

On June 20, 2013, Troopers Lodge #41, Fraternal Order of Police (Charging Party) filed an unfair labor practice charge with the State Panel of the Illinois Labor Relations Board (Board), in Case No. S-CA-13-148, alleging that the State of Illinois, Department of Central Management Services (State Police) (Employer or Respondent) violated Section 10(a) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2012) *as amended*. After an investigation pursuant to Section 11 of the Act, on December 31, 2013, I ordered this matter deferred to arbitration, and that within 15 days after the completion of the arbitration process Charging Party may request that the Board reopen the case for the purpose of resolving any substantial issues.

On September 5, 2014, Charging Party submitted to the Board a copy of the Arbitrator's award in this matter. Charging Party has made no request to reopen the case.

Accordingly, the instant charge is hereby dismissed. The Charging Party may appeal this dismissal to the Board any time within 10 calendar days of service hereof. Such appeal must be

in writing, contain the case caption and numbers and must be addressed to the General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois, 60601-3103. The appeal must contain detailed reasons in support thereof, and the Charging Party must provide it to all other persons or organizations involved in this case at the same time it 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 the appeal has been provided to them. The appeal will not be considered without this statement. If no appeal is received within the time specified, this dismissal will be final.

Issued at Springfield, Illinois, this 4th day of December, 2014.

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



**Melissa Mlynski
Executive Director**